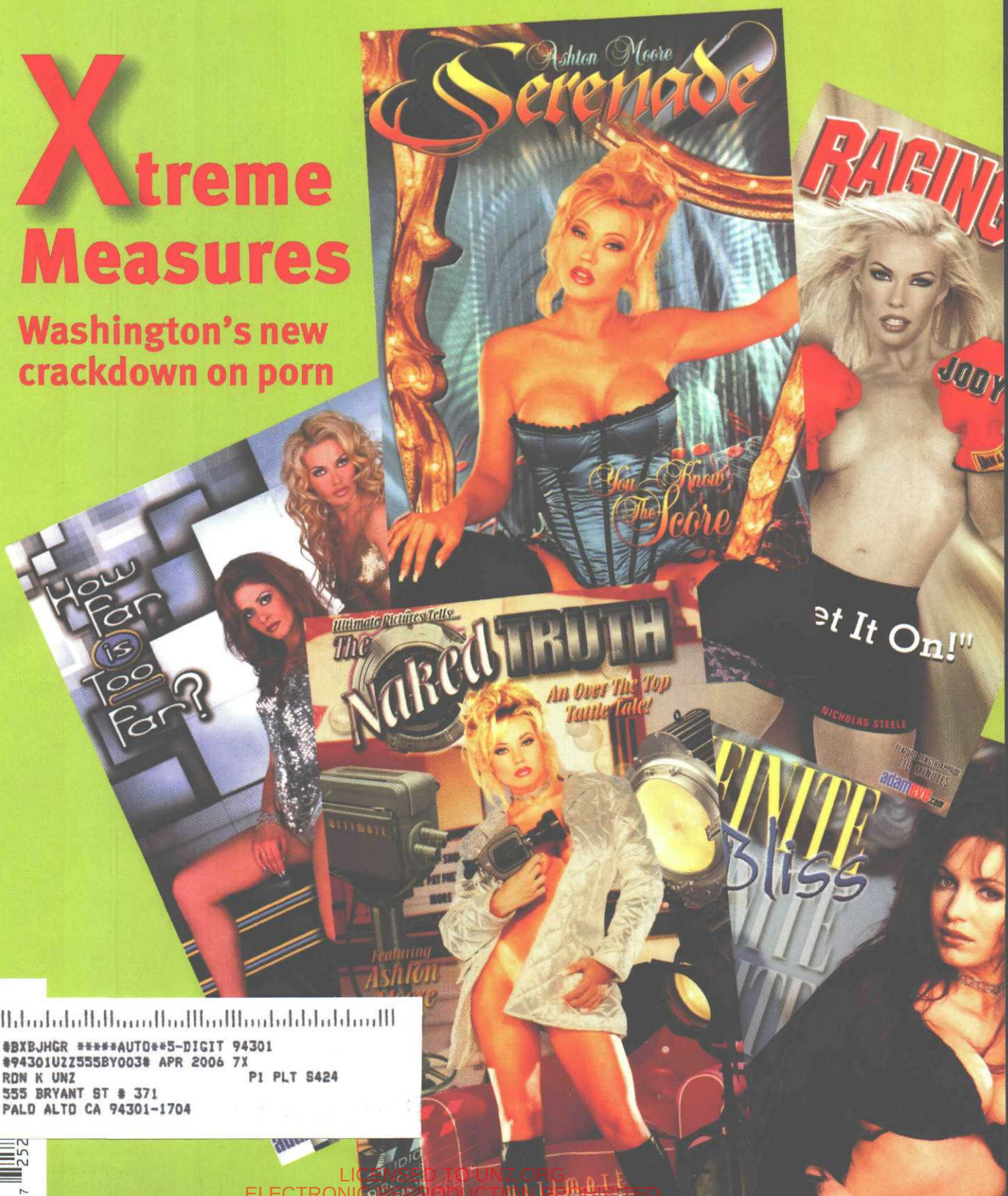
# reason

Free Minds and Free Markets

**Defending Immigrant Nannies**
**Exposing Presidential Intimacy**
**Unmasking War Doves**
**Explaining Income Tax Rebels**

# Xtreme Measures

## Washington's new crackdown on porn




$3.50 U.S. $4.50 Canada May 2004

#BXBJHGR *****AUTO**5-DIGIT 94301
#94301UZZ555BY003# APR 2006 7X
RON K UNZ P1 PLT S424
555 BRYANT ST # 371
PALO ALTO CA 94301-1704

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

## That's why I'm using DonorsTrust to carry out my charitable intent.

They're providing me with a convenient and effective alternative to establishing a private foundation—and one that avoids the pitfalls of the Fords and Rockefellers by ensuring that my beliefs will be honored by my family in the future.

DonorsTrust exists to promote individual and economic liberty and to serve donors who share that purpose. If that reflects *your* purpose, you won't find a better partner.

**Smart giving.**
**Convenient giving.**
**Principled giving.**

For more details, visit our Web site or call us for a free informational brochure.

DonorsTrust
BUILDING A LEGACY OF LIBERTY

703.535.3563 | www.donorstrust.org

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

reason
Free Minds and Free Markets

May 2004
Volume 36, No. 1

Departments

4 **Editor's Note** Express yourself.

6 **Contributors**

7 **Letters** The sorry record of the Transportation Security Administration, a week of eating dangerously, injustice by default, in God's country, every man a demiurge...

10 **Citings** Net nannies; voucher progress; banning bargains; your papers, please; managing the sublime; illicit turntablism; the unwritten rules of scandal...

Columns

16 **Gossip Wants to Be Free** In defense of online scandal mongering. *Matt Welch*

20 **Traditional Prejudices** The anti-Semitism of Alexander Solzhenitsyn. *Cathy Young*

22 **Rant: Guests, Si; Workers, No** Our most delicate thinkers have a problem with hard work. *Brian Doherty*

23 **Sluts for Jesus** Where's my back end participation? *Peter Bagge*

Features

24 **Xtreme Measures** Washington's new crackdown on pornography. *G. Beato*

30 **Tommy Chong's Bongs** A stoner icon goes to jail. *G. Beato*

34 **Backstage Passes** What it takes to run for president in an age of media intimacy. *Charles Paul Freund*

42 **"It's So Simple, It's Ridiculous"** Taxing times for 16th Amendment rebels. *Brian Doherty*

51 **Five Reasons You Don't Owe Income Tax, Dammit!** The most heartfelt beliefs of the "tax honesty" movement. *Brian Doherty*

Culture & Reviews

52 **Temporary Doves** Why are the architects of Kosovo so down on Gulf War II? *Matt Welch*
Madam Secretary: A Memoir, by Madeleine Albright with Bill Woodward
The Bubble of American Supremacy: Correcting the Misuse of American Power, by George Soros
Winning Modern Wars: Iraq, Terrorism, and the American Empire, by Wesley K. Clark

57 **Anime Dreams** The strange but familiar world of a Japanese TV cartoon. *Anders Sandberg*

58 **Not the Same Old Hickory** The contested legacy of Andrew Jackson. *Amy H. Sturgis*
The Passions of Andrew Jackson, by Andrew Burstein

64 **The FBI Files** Federally funded art takes on a new meaning. *Sara Rimensnyder*

66 **Artifact: Public Offense** Why the state prefers meaningless art. *Charles Paul Freund*

Cover Images: Courtesy Adam & Eve

reason (ISSN 0048-6906) is published monthly except combined August/September issue by the Reason Foundation, a nonprofit, tax-exempt organization, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034-6064. Periodicals postage paid at Los Angeles, CA, and additional mailing offices. Copyright© 2004 by Reason Foundation. All rights reserved. Reproduction or use, without permission, of editorial or graphic content is prohibited. reason and Free Minds and Free Markets are registered trademarks owned by the Reason Foundation. SUBSCRIPTIONS: $19.95 per year. Outside U.S. add $10/year surface, $35/year airmail. Address subscription correspondence to reason, P.O. Box 526, Mt. Morris, IL 61054, 815-734-1102. For address change (allow six weeks), provide old address and new address, including zip code. UNSOLICITED MANUSCRIPTS returned only if accompanied by SASE. INDEXED in Readers' Guide to Periodical Literature, InfoTrac, Historical Abstracts, Political Science Abstracts, America: History and Life, Book Review Index, and P.A.I.S. Bulletin. Available on microfilm from University Microfilms International, 300 North Zeeb Rd., Dept. P.R., Ann Arbor, MI 48106. Printed in the United States. POSTMASTER: Send address changes to reason, P.O. Box 526, Mt. Morris, IL 61054. Publications Mail Sales Agreement No. 1376630.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Editor's Note

# Express Yourself

THESE ARE GREAT times for free expression, one of the underpinnings of an open, vibrant society.

By virtually every measure, it's never been easier for more people to express themselves, whether we're talking about politics or poetry or, as our cover story makes abundantly clear, pornography (see "Xtreme Measures," page 24). In a 1999 story for **reason**, I documented that we are in the midst of a "culture boom": a prolonged and massive increase in the production and consumption of art, music, literature, video, and other forms of creative expression, including political discourse.

In the years since "All Culture, All the Time" (online at reason.com/9904/fe.ng.all.shtml), appeared, the trends it described have only increased. That piece was written just as the World Wide Web was becoming a truly mass phenomenon—and well before the term *blogging* had entered common parlance. Despite fears of "media consolidation" and a supposed narrowing of outlets, there can be no question that we have more access to more news, entertainment, and perspectives than ever before.

That sort of freedom undermines established power, so it's not surprising that there's a backlash brewing. This takes any number of forms, some of them more troubling than others. In "Gossip Wants to Be Free" (page 16), Matt Welch discusses how "media ethics hand-wringers" continue to demonize Web journalism as beneath contempt. Especially given evidence that the new form is much quicker to correct itself, it's hard not to see the old guard as a priestly class that feels displaced by developments it can't control.

At least that tussle is taking place in a relatively unregulated marketplace of ideas. In a variety of ways, the federal government is increasingly targeting free expression. New campaign finance reform laws, generally feted by the mainstream press as a way of "taking money out of politics," accomplish nothing more than restricting political speech, especially in the months and weeks before an election. (Is it any wonder that incumbents voted for such measures?)

In the wake of Janet Jackson's infamous "wardrobe malfunction" during the Super Bowl's half-time show, the Federal Communications Commission, charged with protecting that nonexistent abstraction, "the public interest," is working hand-in-fist with Congress to increase its fines against broadcasters of "offensive" programming.

And, as G. Beato reports in "Xtreme Measures," the U.S. Department of Justice is actively prosecuting pornographers for the first time in more than a decade. "In an age of suicide jets and anthrax spam," writes Beato, "obscenity cases feel faintly anachronistic, the comfort crimes of the legal system." Indeed, given the incredible freedom of expression we enjoy today, it's tempting to laugh off this latest instance of Comstockery.

We do so, however, at no small risk. "I consider censorship a cancer," says a lawyer quoted by Beato. "Once it starts, it spreads pretty rapidly."

*Nick Gillespie*



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# FREEDOMFEST

## "Where Free Minds Meet"

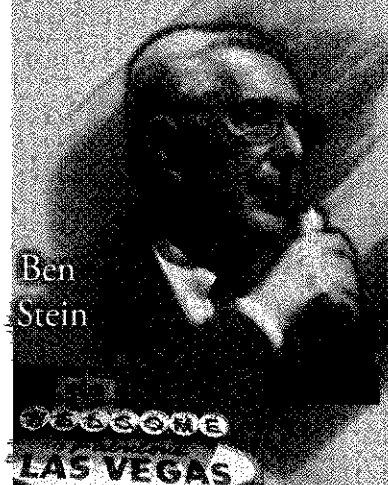
**"FreedomFest is an intellectual's dream – a great place to learn, network and socialize. I wouldn't miss it for the world."**

Robert Poole, Jr.
Founder, Reason Foundation

**May 13-15, 2004**
**Bally's/Paris Resort**
**Las Vegas, Nevada**

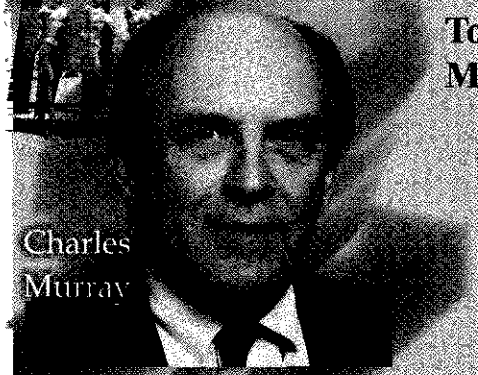
Highlights to include:

- **Breakout sessions**
- **Debates and Panels**
- **Financial Freedom workshops**
- **Expo Hall with Organizations**
- **Laissez Faire Books sale**
- ***Liberty* Editors conference**
- **Evening Liberty Banquets**
- **And Much, Much More!**



Ben Stein

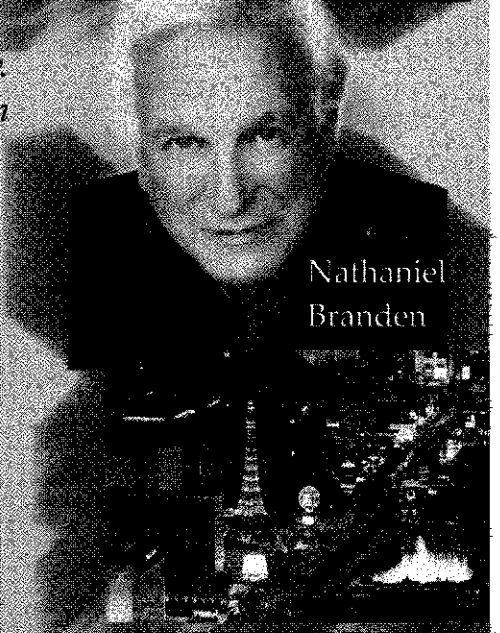
**FreedomFest will be the intellectual feast you have been waiting for. You will join the world's best and brightest libertarian/conservative authors, students, business people, and think-tanks. Great ideas, great books, and great thinkers will enable you to learn, create, and network, thus advancing your liberty and free-market principles.**



Charles Murray

Great Speakers including:

**Gordon Tullock**, *George Mason Univ.*
**Robert Poole, Jr.**, *Reason Foundation*
**Rep. Ron Paul**, *Texas Congressman*
**Ronald Bailey**, *Reason Magazine*
**Dinesh D'Souza**, *Author*
**Tom DiLorenzo**, *Loyola College*
**Mark Skousen**, *Economist*
**...and Many, Many More!**



Nathaniel Branden

YOUNG AMERICA'S FOUNDATION

For more information or to register today, call or visit...

**1.800.USA.1776** **www.freedomfest.com**

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

reason

**Editor-in-Chief** Nick Gillespie (gillespie@reason.com)

**Managing Editor** Jesse Walker (jwalker@reason.com)

**Senior Editors**
Brian Doherty (bdoherty@reason.com)
Charles Paul Freund (cpf@reason.com)
Jacob Sullum (jsullum@reason.com)

**Assistant Editor** Julian Sanchez (jsanchez@reason.com)

**Science Correspondent** Ronald Bailey (rbailey@reason.com)

**Editorial Assistant** Mary Toledo (mtoledo@reason.org)

**Art Director** Barb Burch (bburch@reason.com)

**Photo Researcher** Julie Wolf

**Web Editor** Tim Cavanaugh (tcavanaugh@reason.com)

**Webmaster** Brian J. Taylor

**Reason Express Writer** Jeff A. Taylor (jtaylor@reason.com)

**Contributing Editors**
Peter Bagge, Gregory Benford, James V. DeLong, Glenn Garvin, Mike Godwin, David R. Henderson, John Hood, Alan Charles Kors, Brink Lindsey, Carolyn Lochhead, Loren E. Lomasky, Mike Lynch, John McLaughry, Deirdre N. McCloskey, Michael McMenamin, Michael Valdez Moses, Charles Oliver, Walter Olson, John J. Pitney Jr., Thomas Szasz, Matt Welch, Cathy Young, Michael Young

**Publisher** Mike Alissi (malissi@reason.com)

**Legal Adviser** Dan Erik Franzen

**Editorial and Production Offices**
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064
Tel: 310-391-2245 Fax: 310-391-4395

**Advertising Sales**
Bun Media Group
Ronald E. Bun, 703-893-3632
Joseph P. Whitley, 540-349-4042
(advertise@reason.com)

**Subscription Service**
P.O. Box 526, Mt. Morris, IL 61054
1-888-reason-8 (1-888-732-7668)
(subscribe@reason.com)

**Circulation**
Circulation Specialists Inc.

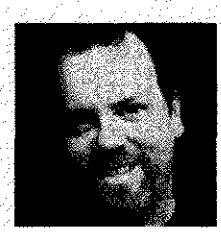
**Newsstand Distribution**
BigTop Newsstand Services
415-643-0161 Fax: 415-643-2983
(info@bigtoppubs.com)

**reason** is published by the Reason Foundation, a 501(c)(3) nonprofit educational foundation. Contributions to the Reason Foundation are tax-deductible. Signed articles in **reason** reflect the views of the authors and do not necessarily represent those of the editors, the Reason Foundation, or its trustees; articles should not be construed as attempts to aid or hinder the passage of any bill before any legislative body. The claims and opinions set forth in paid advertisements published in this magazine are not necessarily those of the Reason Foundation, and the publisher takes no responsibility for any such claim or opinion.

REASON FOUNDATION
**Trustees**
William A. Dunn (Chairman), Thomas E. Beach, David W. Fleming, C. Boyden Gray, James D. Jameson, Manuel S. Klausner, David H. Koch, James Lintott, Stephen Modzelewski, Sarah A. O'Dowd, Robert W. Poole Jr., Randall N. Smith, Al St. Clair, Harry E. Teasley Jr., Frank Bond (emeritus), Walter E. Williams (emeritus)

**President** David Nott
**Vice President, Magazine** Nick Gillespie
**Vice President, Research** Adrian T. Moore

## Contributors



G. Beato

Brian Doherty

Amy H. Sturgis

Freelancer G. BEATO saw his first porn flick, *Behind the Green Door*, as a teenager in the late '70s. The movie was pretty risqué then, but by the time Beato studied the industry for a 1998 article in *SPIN* it was tame. As obscenity prosecutions slowed down during the '90s and pop culture celebrated the outré and shocking, a new generation of porn producers sought to push the envelope; Beato chronicles the legal backlash in "Xtreme Measures" (page 24). The 39-year-old writer got into do-it-yourself publishing in the age of zines and now runs a weblog at Soundbitten.com. His work also has appeared in *The Washington Post*, *Blender*, *Business 2.0*, *Wired*, *Mother Jones*, *Newsday*, and *Salon*, among other places.

According to folks like Irwin Schiff, the income tax is voluntary, the 16th Amendment is a fraud, and filling out your 1040 is a waste of time. A cottage industry in books and conferences promotes this view. But is it America's best-kept secret, or a one-way ticket to the hoosegow? Senior Editor BRIAN DOHERTY, who takes a look at the "tax honesty" crowd in "'It's So Simple, It's Ridiculous'" (page 42), says the movement "combines my interest in underdogs resisting government and my fascination with bizarre and baroque conspiracy theories." Doherty's book *This Is Burning Man* (Little, Brown), a ground-level look at the famous annual counterculture fest, is slated for release this summer.

AMY H. STURGIS traces her ancestry both to Andrew Jackson's in-laws and to the Cherokees forced to travel Jackson's Trail of Tears, so she's well situated to assess the frontiersman president's legacy in "Not the Same Old Hickory" (page 58). Sturgis, who teaches Native American studies at Nashville's Belmont University, is the author of two textbooks on the presidency: *Presidents From Washington Through Monroe* (Greenwood, 2001) and *Presidents From Hayes Through McKinley* (Greenwood, 2003). She also lectures on the political dimensions of fantasy and science fiction, and writes science fiction stories of her own under a pseudonym.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Letters are welcome and should be addressed to

reason
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034
fax: (310) 390-8986
letters@reason.com

### "Dominate. Intimidate. Control."

While the litany of horribles James Bovard cites concerning the Transportation Security Administration's ineptitude and high-handedness ("'Dominate. Intimidate. Control.,'" February) is certainly enraging, his alternative—putting airlines and airports in the business of providing security and punishing them with crippling lawsuits if they fail to deliver it—seems unworkable and unfair.

No amount of "better" intelligence from the feds will enable the private air travel system to thwart every terrorist attack. Yet if Bovard's solution were adopted, every such attack would result in "devastating" lawsuits against air carriers and airports, possibly driving them to financial ruin. Billions of dollars in settlements might be at stake for years, while litigants argued over whether the feds gave timely information or not, or whether some other party (how many airlines and airports did the 9/11 hijackers use again?) bore more culpability.

The affected defendants would be under a financial cloud that would prevent them from getting private capital needed to fund expansion or retire old equipment. The result would be a degraded air transportation system that would put a huge dent in economic prosperity. Only trial lawyers could love such an outcome.

And what's this about the need for "amending U.S. foreign policy to reduce the number of foreigners willing to kill themselves to slaughter Americans"? Exactly which policies need to be amended to placate and appease Osama bin Laden? Support for Israel, the only democratic state in the Mideast? We've already withdrawn our troops from Saudi soil, and Al Qaeda's leaders still talk openly of "chasing us" all over the globe.

I think Norman Mineta is an incompetent horse's ass; he should be fired and the TSA monster defanged. But please, let's not engage in the idiocy of blaming the U.S. for global terrorism or suggest that private airlines and airports should bear the brunt of providing absolutely perfect security, with bankruptcy as the penalty for failure.

*John E. Link*
*Belmont, MA*

### A Week of Eating Dangerously

Neil Steinberg's essay on eating any and all kinds of meat ("A Week of Eating Dangerously," February) reminds me of a child who steals a piece of candy from the drugstore just because his mother told him it was wrong. Stuffing himself with foie gras, veal, and steak simply because he can proves only that Steinberg chooses not to examine the treatment of farmed animals or the consequences of a meat-based diet for the planet and his own health.

He may not be troubled by what happens to animals: castration and dehorning without any relief from the agony; confinement in cages or cement stalls without fresh air, sunshine, or even space to turn; bloody slaughter by assembly line. But fortunately, many people are willing to find out what happens to chickens, pigs, cattle, turkeys, fish, and other animals before their body parts wind up on a plate. I hope your readers will call 1-888-VEG-FOOD or visit GoVeg.com for the facts and a free Vegetarian Starter Kit.

*Bruce Friedrich*
*Director of Vegan Campaigns, PETA*
*Washington, DC*

Neil Steinberg repeats an argument frequently heard in the debate over the humane treatment of animals: that "nearly every cow alive owes its existence to either the meat or the dairy



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

industry, and that should the fad of vegetarianism ever really affect those businesses, animal lives would be lost, not gained." This notion has a superficial plausibility, but it's actually mistaken on two counts.

The world's highest concentration of cattle are to be found not in beef-loving North America, but in India, where Hindus don't eat cows but venerate them. Clearly there's more than one way to ensure high cattle populations.

But the deeper problem is Steinberg's dubious assumption that a concern for the ethical status of animals entails an obligation to ensure as many animals are born as possible. After all, human beings make the strongest ethical claims on us, but no one takes that to mean we are obliged to ensure the highest possible number of people. If we did, consider all the things that would be called into question, from celibate priests and nuns to access to birth control. We don't assume that because killing existing people is impermissible, creating new ones is mandatory.

Steinberg accuses animal advocates of a "sneering disregard for humanity" and "self-righteous delusion." Scrape away the bald ad hominems and the unpersuasive arguments, and there isn't much left. If Steinberg's article is any indication of the other side, it's no wonder the animal ethics movement is gaining such ground.

*Andy Lamey*
*Ottawa, Ontario*

I was disappointed that **reason**, the magazine celebrating the noble concepts of "free minds and free markets," would publish an article celebrating exploitation, misrepresenting animal rights supporters, and making light of the suffering of other beings.

Neil Steinberg brushes aside the suffering of tens of billions of animals killed annually on factory farms in an attempt to classify animal rights activists as nuts who receive a big grin from "Mother Earth" every time they eat a soy burger. The truth is that ethical vegans choose not to consume animal products because they do not want to support actions that cause suffering. They put aside some minor pleasures to make the world a more compassionate place. What part of that suggests a "disdain for people"?

Steinberg thinks animals should be treated decently and eaten guiltlessly, and then deludes himself into thinking that the animals aren't really suffering at all. But the way animals are treated on factory farms is anything but decent—it's downright sickening.

Veal calves are separated from their mothers only days after birth and chained in tiny, dark crates. When they are finally slaughtered at about 16 weeks old, they are often too sick or crippled to walk. This is a very far cry from life in a field.

Freedom-loving individuals should try to spread liberty as far and as wide as possible. To deny certain sentient beings liberty while granting it to others is narrow-minded and hypocritical. Animal rights and libertarianism are harmonious causes. Libertarianism and exploitation are not.

*Josh Corn*
*State College, PA*

### Injustice by Default

Congratulations on Matt Welch's article "Injustice by Default" (February). Welch's article was well-written but missed a larger point: What business does government have in the alimony and support collection business? Should government be administering domestic relations at all? We suggest it was a better world for everybody (except feminists) when churches administered domestic relations, when women weren't encouraged by discriminatory government policies to evict husbands regardless of fault or to breed children without husbands.

Without government involvement, more fathers—married and unmarried—would have custody or at least liberal visitation, practically eliminating the need for welfare, government involvement, and all those bureaucrats. Arguably, children would be better off both economically and socially. And we welcome the argument.

*Richard Doyle*
*President, Men's Defense Association*
*Forest Lake, MN*

Matt Welch fails to mention the greatest outrage of all: It is hypocritical of the government to guarantee a woman's right to an abortion while forcing a man to pay child support against his will. As Karen DeCrow, former presi-

reason
Free Minds and Free Markets

free minds

free markets

cool stuff

go to reason.com/stuff.shtml to see reason t-shirts, sweatshirts, mugs, caps, and more.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

dent of the National Organization for Women, said, "If women have the right to choose if they become parents, men have that right, too."

Paternity suits should be abolished. Every argument in favor of them is a mirror image of an argument against legalized abortion. Compare: "If men don't want to support their offspring, they should use condoms" with "If women can use the pill, why do they need a right to an abortion?" And when so-called deadbeat dads are labeled irresponsible, it mirrors the anti-abortionists' stereotype of women who want abortions as irresponsible sluts.

*Brian Sorgatz*
*Sacramento, CA*

### In God's Country

Tim Cavanaugh's review of the new Madalyn Murray O'Hair biography ("In God's Country," February) was interesting, if not especially perceptive. I am interested, however, in his rather strong and gratuitous characterization of Martin Luther as "a churlish priest and an anti-Semite even by the standards of his day." I wonder what basis he has for this statement: Is it his own research into Luther, or his reliance on questionable secondary and tertiary sources?

I suspect Cavanaugh was exposed to materials demonizing the man during his formative years in Catholic school. But a review of some of Luther's writings will reveal him as a highly principled lawyer and professor of theology as well as a loving pastor, friend, and parent—certainly less churlish and anti-Semitic than was typical of the Roman Church of his day.

*Richard G. Lehrer*
*Dyer, IN*

**Tim Cavanaugh replies:** Much as I'd like to blame all my adult failings on a lousy parochial education, the quality of religious instruction at Blessed Sacrament School was in fact so poor that we learned little even about Catholic doctrine, let alone the beliefs of Protestant schismatics. I was well out of grammar school before I realized that when people referred to "Martin Luther" they weren't using a familiar name for Martin Luther King. Luther's letter "On the Jews and Their Lies," I think, is a pretty damning document. It's certainly possible that many or most Christians at the time shared Luther's anti-Jewish sentiments, but few or none were as prolific—and prescriptive—in making their feelings known.

### Every Man a Demiurge

Jesse Walker's "Every Man a Demiurge" (February) traces the rise and demise of an entertainment genre depicting reality as an illusion or simulation. A similar genre also had a smaller rise and fall during that time: the idea that our universe is but one of many in a multiverse, in which alternate universes are identical to ours up to a certain point but then diverge. Such alternate histories have been around for a while, such as in the collections edited by Greg Benford. In the '90s on television there was *Sliders*, with worlds in which the dinosaurs lived into modern times, the American Revolution never took place, or population control was enforced through soft drinks containing birth control chemicals and lotteries for killing off people.

On the movie screen there was *Sliding Doors*, where in one universe the protagonist just misses a subway train, while in another she just barely catches it. In the latter she arrives home to find her mate in bed with another woman; in the former the other woman leaves before her arrival, leading to very different consequences.

*Sliders*, being a series, exhibited the same decay Walker notes in the "illusion" genre. Later episodes focused on fighting the evil Kromaggs in chases across the universes, which themselves no longer had any remarkable distinguishing features, except that sorcery seemed to work in some of them. Such seems to be the inevitable down slope of popular series.

*Charles Kluepfel*
*Bloomfield, NJ*

CORRECTION: In "Injustice By Default" (February), Raegan Phillips was misidentified as Raegan "Kelly," and the article incorrectly stated that Taron James frequently flies to Sacramento, when in fact he drives.

Dear Readers,

If you love **reason** and want to help us bring you even more "Free Minds andFree Markets," then here's what you can do:

**Patronize our sponsors!**

Please check out our advertisers in this and every issue and help **reason** grow by sending your business their way.

Thanks...and enjoy the magazine!



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Net nannies; voucher progress; banning bargains; your papers, please; managing the sublime; illicit turntablism; the unwritten rules of scandal

*Student drug testing*

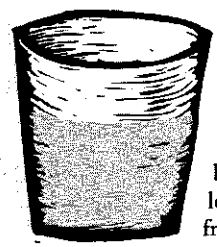
## Let the Love Flow

Jacob Sullum

ACCORDING TO President Bush, nothing says "I love you" like a demand for urine. Pretty kinky-sounding stuff for a State of the Union address, and more interesting than anything else he had to say that night.

Alas, the president was talking about student drug testing, which he wants to encourage with new federal funding. "The aim here is not to punish children," he explained, "but to send them this message: We love you, and we don't want to lose you."

Bush claimed "drug testing in our schools has proven to be an effective part" of "our aggressive community-based strategy to reduce demand for illegal drugs." But as the Drug Policy Alliance and the American Civil Liberties Union were quick to point out in a joint report, "the first large-scale national study on drug testing found no difference in rates of drug use between schools that have drug testing programs and those that do not."



The U.S. Supreme Court has upheld random screening of students who participate in sports and other competitive extracurricular activities. But schools still face challenges under state constitutions, which may provide stronger privacy protections. Last fall, for instance, the Pennsylvania Supreme Court reinstated a lawsuit that seeks to overturn the Delaware Valley School District's random testing of students who have parking permits or who participate in extracurricular activities.

The push for student drug testing has encountered opposition in a more surprising place. According to a new pamphlet distributed by the Office of National Drug Control Policy, "Drug testing of kids is a complicated issue and is best done within the context of a doctor-patient-parent relationship"—presumably because kids would rather feel love from their parents than from their coach or choir leader.

If a cup of urine seems like a strange symbol of affection, how about a lock of hair? Federal drug testing guidelines that are expected to take effect early next year will include hair testing, which can detect drug traces for up to three months, thereby nabbing even more people whose drug use has no impact on job performance. (See "Urine—Or You're Out," November 2002.) The guidelines, which apply to 1.6 million federal workers and another 5 million or so employees in regulated industries, are widely emulated by private employers.

An official with the Substance Abuse and Mental Health Services Administration, which oversees the guidelines, told the *Associated Press* the aim is "to increase the deterrent value of our program, which is basically the whole bottom line." *Deterrence* is the bottom line? Where's the love?

*A bad case of crabs*

## Fishy Business

Michael De Alessi

FISHING FOR Alaska Bering Sea crab is one of the most dangerous jobs in America. But a good haul can net each crewman $50,000 to $60,000, so wily fishermen are still eager to find

## 25 years ago in reason

"My advice to teachers is to go on strike in the classroom....You can't teach them anyway, so stop trying....Who cares? Certainly not the children or their parents."

**—Theresa Hale De Soubiese, "Surviving the Blackboard Jungle"**

"If such a relatively uncomplicated conspiracy and cover-up as Watergate came unraveled so easily, how could ...the Kennedy assassination [plot] have been kept so well for so long?"

**—William Marina, "Shooting Down the Conspiracy Theory"**

"To compel men and women to comfort the sick, restore the forests, or repair the cities is forced labor.... It matters not...whether the pay is the $288 a month paid to U.S. Army recruits or the $3 a month paid to Soviet army conscripts."

**—Robert Poole Jr., "The 'National Service' Menace"**

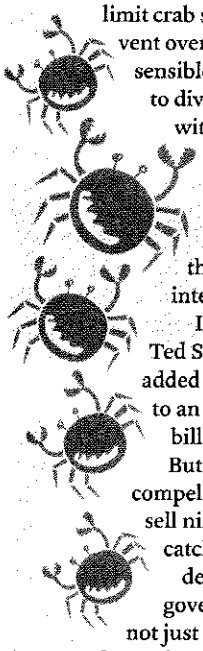
"The anti-nuclear, anti-energy environmental issue is tailor-made for those who seek massive and rapid political change....Attempts to meet energy demands are discredited with scare tactics and denounced as morally unacceptable degradations of the environment."

**—H. Peter Metzger, "Environmental Activists Capture Washington"**



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ways around regulations that limit crab seasons to prevent overfishing. A more sensible approach is to divvy up the catch with tradable fishing rights, which promote conservation by tying it to the crabbers' self-interest.



In January Sen. Ted Stevens (R-Alaska) added such a measure to an appropriations bill. So far, so good. But his plan also compels the crabbers to sell nine-tenths of their catch to processors designated by the government. That's not just an egregious form of corporate welfare; it undermines the whole point of the reform. Forcing fishermen to sell at whatever price the processors set means little or no profit for the crabbers, and therefore little or no asset value in the fishery, and therefore no incentive for conservation.

Why would Stevens include such a measure? Here's one possible incentive: Ben Stevens—Ted's son and an Alaska state senator—was paid over $80,000 during the last two years as a consultant for the processors' trade association. Undeterred, Stevens Sr. tells *The Washington Post*: "This state's so small, there's hardly anything my son could do that wouldn't be affected by what I do....I didn't do this for Ben. I did this for the crab industry." ▯

*You're on café camera*

## Net Nannies

Julian Sanchez

If you walk into an Internet café in Garden Grove, California, you should smile. In January the state's 4th District Court of Appeal upheld a city ordinance requiring Net café owners to install video surveillance systems. The ordinance, wrote Justice David Sills in an unusually vitriolic dissent, "*literally* forces a 'Big Brother' style *telescreen* to look over one's shoulder while [one is] accessing the Internet."

The law—which also controls hours of operation, mandates that the businesses hire security guards, and stipulates hours during which minors may not be admitted—was prompted by a series of violent incidents "in or around" city Internet cafés. Cybercafé owners challenged the rules, which they say invade privacy and unduly burden free speech. The court agreed on the second point only, striking down a requirement that new Net cafés obtain a permit before opening.

Ronald Talmo, the Western State University law professor who argued the café owners' case, maintains that the remaining regulations are not narrowly tailored to meet the city's safety concerns. He also worries that the requirements may chill speech. The majority's reasoning, he says, amounts to: "We're all on tape so much already. What's the big deal?"

Lead plaintiff Diane Vo, who owns the Vietnam Internet Center, wonders how any of the new rules would have prevented the incident that sparked them: the killing of a college student who had just *left* a café. As Sills' dissent observes, only three of the city's 23 cybercafés have experienced the "gang-related violence" that provided the rationale for the law. Talmo suspects that council members are simply worried about any place where young Asian men tend to congregate.

Vo and Talmo are still contemplating whether to bring their case to the California Supreme Court. One concern is that continued opposition may not be pragmatic: Vo says police have begun entering her business to "card" customers in their 30s and notes that after she became licensed as a security guard to comply with that provision of the new regulations, the city council amended it to prohibit owners from serving as their own guards. Vo, who says she "put all my savings into this business to try to give the Vietnamese community access to the Internet," says she probably will have to close up shop if the regulations stand. ▯

*Voucher progress*

## Capital Choices

Lisa Snell

Beginning in fall 2004 the D.C. School Choice Initiative will provide $14 million for approximately 2,000 low-income children in failing D.C. public schools. Students will receive grants of up to $7,500 each to attend parochial or private schools, but the bill also provides $13 million for government schools and $13 million for additional charter schools.

That means the program lacks a key element of competitive markets: The D.C. public schools have no financial incentive to improve because the money does not follow the child leaving the public school. In fact, the D.C. schools will have significantly more money now than before the voucher initiative. Nobel laureate Milton Friedman, arguably the father of public school choice, sums it up as "$40 million for 2,000 vouchers or $20,000 per voucher, of which at most $7,500 goes to the school accepting the voucher."

Despite this drawback, a few D.C. children will have more options, and some of the huge number of public education dollars will flow to other school providers. School choice supporters hope the high-profile program will spur similar legislation in other cities with failing public schools. ▯

*Banning bargains*

## Big Boxing

Ted Balaker

Do politicians stick up for the little guy or suck up to big corporations? In the nation's largest brawl over big-box retailers, California pols are anxious to prove they're in the little guy's corner.

Wal-Mart wants to open 40 supercenters in the Golden State, but many local officials worry that the retail giant's grocery »

### Quotes

"Perhaps the genitals have not been named before In such a straightforward and open manner in works of mass media and art in China." ▯

—Zhang Baoquan, owner of Beijing's Today Gallery, on government censors' cancellation of *The Vagina Monologues*, quoted by Reuters, February 12

"There's not a stone that's going to be left unturned as to what our abilities are." ▯

—Federal Communications Commission legal adviser Jonathan Cody, announcing the agency's determination to punish the airing of Janet Jackson's breast at the Super Bowl, in the February 3 *Washington Post*

### Source

Apple's *1984* commercial for the Macintosh was hailed as groundbreaking advertising, but it can't touch the notorious "Daisy ad" of 20 years earlier, which darkly intimated that voting for Barry Goldwater invited nuclear Armageddon. In fact, campaign advertising, from high drama to high camp, may be the best thing to come out of the American political system. Who can forget George Bush I's Willie Horton spot, or Reagan's "Bear In the Woods"? Relive the magic at www.uiowa.edu/~commstud/resources/pol_ads.html and faculty.kutztown.edu/richards/220/ad-archive.html, where you'll find links to videos of some of the most famous and infamous campaign spots, along with reams of analysis. ▯



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

## Brickbats

Officials at the Pentagon's Defense Contract Audit Agency are supposed to uncover fraud and waste in government contracts. But the agency is now charged with spending 1,139 man-hours altering its own files to pass an internal review. The agency brought in help from other offices to change the files, costing taxpayers some $1,600 in travel expenses.

As France prepares to ban religious symbols from public schools, one official says the government could also ban beards if they are expressions of religious faith. "As soon as it becomes a religious sign and the code is apparent, it would fall under this law," says Education Minister Luc Ferry.

Police searched a 13-year-old student at Okeeheelee Middle School in West Palm Beach, Florida, who was suspected of having a gun. When they found nothing, Principal David Samore still wanted to question the student and allegedly held a toy gun to the boy's neck. Samore, who says he was trying to show the student that even toy guns can frighten people, was suspended for 10 days without pay. When he returned, teachers welcomed him with yellow ribbons, balloons, flowers, and a plaque.

The Greek Cypriot army is trying to find out how top-secret ground plans for military bases wound up in a dump. A truck driver found the papers, which contain details such as the technical specifications for weapon launch sites and the thickness of walls at sentry posts on the island's cease-fire line with Turkey.

A test by the U.S. Department of the Interior to see how Park Police would handle a suspicious package yielded disturbing results. A black plastic bag was first placed at the rear of the Washington Monument for 20 minutes, then at a security checkpoint for 15 minutes. No one noticed it, and the only police officer around appeared to be asleep.

It's not just American law enforcement officials who enjoy a good nap on the job: The judge who convicted three men of plotting to steal more than $400 million in diamonds from London's Millennium Dome has admitted to dozing off during the trial's closing arguments.

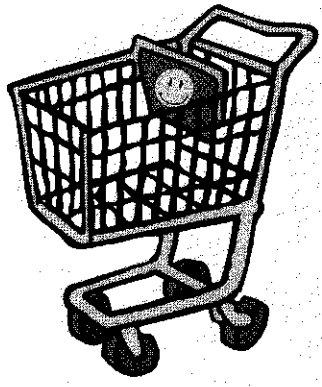
The Iranian government has barred hundreds of reform candidates from running in the country's upcoming parliamentary elections. Reformist members of parliament say more than 80 percent of current reform-minded deputies—including the current president's brother, who is the deputy speaker—have been banned from running by the Council of Guardians, an unelected body of conservative religious leaders and lawyers.

Robert Neal and Francis Jones, former senior procurement officers in the Pentagon, each were sentenced to more than 24 years in federal prison for conspiracy, extortion, money laundering, witness tampering, and obstruction of justice. The two were found to have demanded cash, gifts, and sexual favors from prostitutes sent by companies trying to do business with the military. Guess they took the title "procurement officer" a bit too literally.

*Charles Oliver*

› prices are too low. They say that Wal-Mart will squash smaller businesses and that its non-union jobs will depress wages. From the Bay Area to Southern California, several cities have banned big-box retailers; others are pondering bans.

But a recent analysis by the Los Angeles County Economic Development Corporation suggests that competition actually helps the little guy. It reports that Wal-Mart would bring jobs to communities that need them, and that lower grocery



prices would bolster buying power. Critics dismiss the study as self-interested—Wal-Mart funded it—but it's not the first to associate the superstore with economic benefits: A 2001 study by two economists at Marshall University found that Wal-Mart increased local employment rates and wages.

Of course, the world's largest retailer is only a part-time supporter of free markets. In Arvada, Colorado, local officials hungry for sales tax revenues want to confiscate and drain a privately owned lake and erect a Wal-Mart. The dispute between landowners and government officials has grown so heated that the state Supreme Court has agreed to hear the case. Instead of booting David or banning Goliath, perhaps politicians should just let everyone play fair?

*ID demands DOA?*

## Your Papers, Please

Brian Doherty

The Supreme Court is once again considering the nuances of when it's OK to arrest an American citizen simply for refusing to show a cop an ID.

The case, *Hiibel v. Sixth Judicial District Court of Nevada*, involves a Nevada man, Larry Hiibel, who was approached by an officer on the suspicion, generated by a phone tip, that he had struck a woman in his parked truck. Hiibel refused to show his ID and was arrested under a Nevada statute that says an officer may detain anyone he reasonably thinks has committed, is committing, or is about to commit a crime, and that "any person so detained shall identify himself."

Circuit courts have differed on whether mere refusal to identify oneself can be considered a criminal act. Various parts of past Supreme Court cases lean toward Hiibel's side of the argument, but it's not clear whether he'll prevail.

In an age of multiplying linked databases in the hands of police, such as the Multistate Anti-Terrorism Information Exchange, the simple act of identifying oneself to an officer becomes much more complicated. As the Electronic Privacy Information Center wrote in its amicus brief in this case, "a name is no longer a simple identifier: it is the key to a vast, cross-referenced system of public and private databases, which lay bare the most intimate features of an individual's life. If any person can be coerced by the state to hand over this key to the police, then the protections of the Fourth and Fifth Amendments have been rendered illusory."

A victory for Hiibel could overthrow laws in Nevada and at least 23 other states that allow officers to demand identification from anyone they stop under reasonable suspicion.

*Managing the sublime*

## Culture Club

Charles Paul Freund

The International Network on Cultural Policy (INCP), a group of some 60 culture ministries, exists "to develop strategies to promote cultural diversity," »



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# Balance Sheet

Jeff A. Taylor

**Job Core**
IBM creates a $25 million training fund for IBMers afraid that their jobs will be outsourced. The move tries to get ahead of outsourcing hype and, more importantly, actually help someone.

**Maize Phase**
The British government edges closer to allowing the cultivation of a genetically modified corn, which would move the U.K.'s biotech policy closer to the U.S.'s than to the biotech-spooked E.U.'s.

**Hemp Day**
The 9th Circuit Court of Appeals finds that strict regulation of hemp foods simply because they contain trace elements of THC makes no sense. The feds had sought to ban the sale of foods containing or flavored with hemp.

**Liquor Run**
The state house in Vermont modifies alcohol laws to allow bar hoppers to order two drinks at once or actually walk from the bar to a dance floor with a drink. Both practices had been banned out of fear that...well, it's not exactly clear why.

**Interactive Action**
Researchers at eMarketer find that the Net has surpassed cable TV in household penetration. The Net is used in 68 percent of households; cable reaches 66 percent. Net penetration continues to grow while cable TV has remained flat for years.

**Market Change**
A U.N. commission finds entrepreneurship crucial to attacking poverty in developing countries. Former Mexican President Zedillo, a commissioner, notes that "property rights aren't truly protected, and government regulation of businesses is excessive and of bad quality."

**Back Spin**
Spin maven Bill O'Reilly vows to be much more skeptical about the Bush administration after the WMD snipe-hunt winds down. Doesn't make up for questioning the IQ, motives, and very sanity of those who took that position before him, but it's a start.

**Yes? And?**
A study by the Columbia University School of Nursing spawns breathless headlines reporting that antibacterial soaps do not kill viruses. Nor do they save the rainforest, make you taller, or do any number of things they are not designed to do.

**PATRIOT Jr.**
Rhode Island joins New York, Virginia, Florida, Massachusetts, and other states in creating its own homeland security law. These statutes make some previous public records secret and, duplicating federal law, create new felonies for things like using a weapon of mass destruction.

**Weak Teacups**
Fear of lawsuits infects the Magic Kingdom: Disney World neuters its famous spinning Mad Tea Party ride after a disabled rider falls. The cups are now nearly impossible to spin, park visitors report.

**Roman Excess**
The Italian Parliament votes in a strict ban on assisted reproduction. Freezing embryos and egg donation are among the mainstream fertility techniques outlawed.

**Gateway Drugs**
The Food and Drug Administration flips out over a Minnesota state program to buy cheap drugs from Canada. The FDA labels the practice unsafe, unsound, and ill-considered. Worse, it operates "outside of our regulatory system." The horror.

**Ex Copy**
A U.S. District Court in California declares there is no such thing as fair use in the digital age. The court bans DVD X Copy software as a violation of copyright laws and explicitly tells consumers that they may only make analog backups of their own DVDs.

**Government Tithe**
Federal officials fine a Maine man $10,000 for repeatedly crossing the Canadian border to attend church. His mistake was failing to drive three hours each way to the only Sunday-manned border checkpoint, opting instead to cross, as he has for decades, near his home.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Data

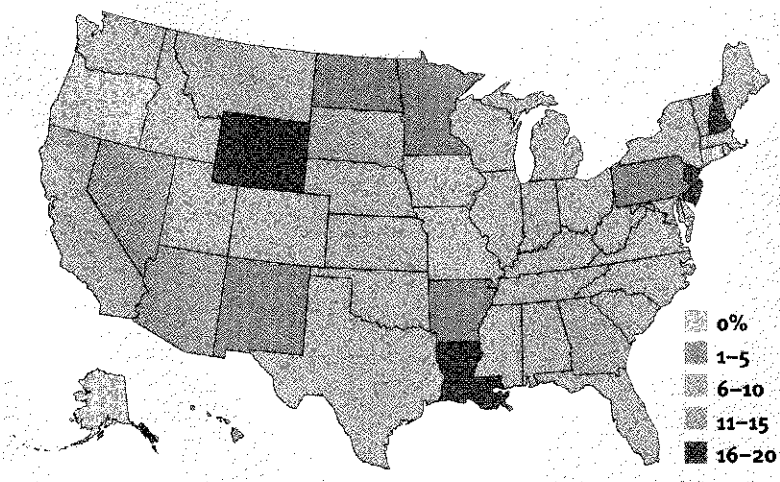
## State Squeeze

Julian Sanchez

Debates about tax policy and the economy usually focus on *federal* taxes. But even as President Bush argues for the extension of his tax cuts, a study conducted by Ernst & Young for the Council on State Taxation finds state and local taxes on businesses—including property, sales, and corporate income taxes—growing at an accelerating rate. From fiscal year 2000 to fiscal year 2003, in a foundering economy, state and local taxes on businesses grew by 8.3 percent, or 2.7 times faster than nonbusiness taxes, accounting for some two-thirds of state and local revenue growth. And the trend was toward higher growth: Average taxes grew 1.6 percent in 2001, 2.1 percent in 2002, and 5.3 percent in 2003.

The biggest tax hiker was Wyoming, where taxes paid by businesses rose 20 percent. Businesses there paid a whopping 69 percent of total taxes. In only three states—Oregon, Connecticut, and Alaska—were taxes held constant or lowered. Perhaps this trend is not entirely unrelated to that "jobless recovery" we've been hearing about.

**Increases in Business Taxes, FY2000–FY2003**




Sources: Council on State Taxation, calculations by Ernst & Young

› *diversity* meaning creative works that haven't been exported from the U.S.

Called into being in 1998 by a Canadian minister, the INCP meets annually to brainstorm and to chew over learned papers. The 2003 conclave, held last fall in Croatia, produced a number of worthy thoughts, including a remarkable paper entitled "Research on Models of Financing Culture." Six years into its life, the INCP has taken up the issue of culture's economic value.

The paper offers four financial models, including the "liberal" market model in which people spend their money on whatever they like; the INCP thinks such markets consist of "cultural products intended for mass consumption." The other models involve the state's spending the people's money on what official cultural arbiters like, either at the national level, at the local level, or through private foundations.

There are some interesting moments in the paper, which recognizes a "linkage between culture and the economy" that is "reflected in two associated processes: 'acculturation' of the economy and economization of culture." That is, cultural activity has become a driving economic force even as an increasing number of products are marketed in terms of their aesthetic dimension. The INCP thus tiptoes up to an epiphany about the personal meaning that makes culture valuable to consumers. Ultimately, however, the INCP is blinded by its understanding of markets as places of mass (rather than personal) exchange.

"Cultural policies," asserts the paper, "set the framework for artistic production which represents the most sophisticated form of human expression. Art... is the fruit of social experience which communicates with the deepest aspects of human spirituality. And this is precisely the value which cannot be reduced to simple economic considerations." In other words, culture is a transcendent phenomenon, so it must be managed bureaucratically.

The INCP's 2004 meeting will be held in China.

*Illicit turntablism*

## DJ Clampdown

Jesse Walker

THE MUSIC industry's copyright crackdown entered a new phase late last year. The Recording Industry Association of America (RIAA) is now pushing police to raid record stores that sell DJ mixes—CDs assembled by disc jockeys to advertise their ability to assemble other people's tracks into a danceable set.

Selling such discs is quasi-legal at best: While some are endorsed by the artists that appear on them, they hardly ever have the blessing of the labels. And when they're not just passed hand to hand but sold at a gig or in a store, it's easy to accuse the merchant of profiting illegally from other people's work.

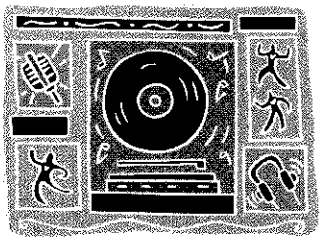
On the other hand, it's not clear that the raids have been entirely legal either. "The only DJ mixes I had were behind the counter for personal listening, and they confiscated them," one Indianapolis store manager, Jerome Avery of City Music, told *The Village Voice*.

Nor are jocks who sell their mixes the only victims of the crackdown, especially now that



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the industry group is leaning on CD pressing plants as well as stores. Before December, DJ Vivian Host writes in *The San Francisco Bay Guardian*, "putting out a mix CD was as easy as sending the master and artwork to the plant." Then things changed. "What I discovered," says Host, "was that the RIAA had pressured every CD-manufacturing house from Ottawa, Canada, to Canton, Ohio, into requiring lengthy documents proving that each track a DJ wants to use is licensed—which meant I needed a lot of paperwork (and cash) to



complete my 23-track mix that says 'Promotional Use Only' on it in big letters."

Host isn't sure the crackdown makes sense even if a DJ *is* breaking the law. She asks: "Wouldn't a label probably pay a street rep twice as much to do the kind of grassroots, targeted street promotion an illegal mix CD offers an up-and-coming artist?"

*The unwritten rules of scandal*

## Nookie Monster

Jeff A. Taylor

WHEN RUMORS erupted on the Internet that John Kerry had cheated on his wife, the mainstream media dithered over whether to cover it. Average news consumers could be forgiven if they didn't quite understand the rules in play. The old rules have broken down, and no amount of hand wringing can bring them back. What reporters and editors can do, though, is level with their customers.

The truth is that the kind of rumors swirling around Kerry would not have been reported 10 or 15 years ago. Instead, they would have been faxed around the Beltway, been the subject of newsroom gossip, and lurked just offstage in every campaign story or interview. That world is obviously gone, the crinkled "hot fax" story replaced by Matt Drudge and millions of eyeballs a day.

But still lurking is the unofficial double standard for reporting on questions of marital fidelity. Consciously or not, much of the media lump liberal politicians in the pro-adultery camp, while conservatives get the anti-adultery tag. What this means is that a conservative is automatically viewed as having a more newsworthy private life. It has to square with his pronouncements on "family values," or he will be judged morally inconsistent, and this inconsistency is an issue that

will be brought to the attention of voters.

This is part of the de facto bargain the media have struck with politicians, particularly in election years: We will be your conduit to project whatever image you choose, but you only get one image. Try to complicate it—or double-cross us—and the deal is off. Kerry, as a liberal, did not trigger the media's higher level of scrutiny during his career or campaign. Fair enough, but only if everyone knows the score.

## Net Savvy

Julian Sanchez

*Duncan J. Watts*

Cascading failures in the power grid, the spread of epidemics, bubbles in the stock market, the sudden popular rejection of a repressive political regime—can these disparate phenomena, in so many different realms, have anything in common? Duncan J. Watts, a sociologist at Columbia University, thinks so. In *Six Degrees: The Science of a Connected Age* (Norton), he explains how the emerging science and mathematics of networks shed light on the behavior of connected systems. Assistant Editor Julian Sanchez spoke with Watts in February.

**Q:** Malcolm Gladwell's bestseller *The Tipping Point* suggested that a few well-connected early adopters can spark huge social changes. Is that right?

**A:** My interpretation is the opposite of Gladwell's. He has these "influentials" or opinion leaders, and you influence them, and they influence everything else. And it's just not true. We knew 50 years ago that this model was wrong. After the fact, and this is why Gladwell's book is so beguiling, you see that crime rates dropped or Hush Puppies took off and *then* you can always find the people with whom it started. But if it's something about *them*, why aren't they driving all the other trends?

What turns out to be the deciding factor is not the "influentials" but the people who are easily influenced. You might have someone who influences five times as many people as the average, but the total numbers relative to a population are still very small. Almost all of the action is away from the center.

We like the idea of influentials because then you can see cause and effect quite easily. What's actually happening is lots of people making decentralized decisions, but we want to be able to locate *the* reason for remarkable events.

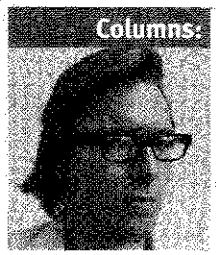
**Q:** Why did Howard Dean's ballyhooed use of distributed social networks fall so flat?

**A:** Everybody thinks Dean was the "Internet candidate." But the Internet found Dean, not the other way around. Someone decided to start a Howard Dean Meetup, and it was only after that became popular that the campaign co-opted it and jumped on the bandwagon. It wasn't like they set things up that way.

And when things got tough, what did Dean do? He fired [campaign manager Joe] Trippi and said, "We want to centralize this organization." When no one is in charge, you have no idea what's going to happen. All the results that we have about how dynamical processes play out on networks show that they're tremendously unpredictable. Distributed systems are good at doing a lot of things, but it's hard to get them to do anything in *particular*.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED



Columns: Matt Welch

# Gossip Wants to Be Free

## In defense of online scandal mongering

On January 17, 1998, Matt Drudge posted a siren-decorated "World Exclusive" declaring that *Newsweek* had spiked a story regarding President Clinton and a certain 23-year-old former intern. The report and several follow-ups sat there on his site like radioactive turds, ignored by the rest of the media universe for four agonizing days.

This is how much tighter the rumor cycle is now: On February 12, 2004, Drudge set off another alarm, this one about an investigation by reporters from *Time*, ABC News, and *The Hill* of a possible fling between John Kerry and a former intern. The report was immediately picked up by talk radio, by British newspapers, by New York tabloids, and (pre-emptively, one assumes) by media ethics hand wringers such as *Editor & Publisher*. Within four days both Kerry and his alleged hottie had responded to press inquiries with firm public denials, which were duly noted in the serious media outlets. By day five it was all over but the shouting about What This Means for Journalism.

"There definitely is a media food chain," the oft-quoted, dour media critic Tom Rosenstiel told *The Boston Globe*'s Mark Jurkowitz in one of the dozens of ethics postmortems. "What you get is...the bad journalism driving out the good."

Rosenstiel has it backward. If there was indeed no affair (and Drudge continues to suggest there was, pointing out that Kerry's oral denial is much weaker than Monica Lewinsky's signed affidavit), having the story vetted and slapped down by elite news organizations before it could gain political traction should be hailed as a triumph of substance over scandal. Instead, you had reactions like this, from Greensboro, North Carolina, *News and Record* Editor John Robinson: "Welcome to the scary new world of stories without substantiation and media without accountability. In this land, truth is simply an afterthought."

The Kerry story shared a theme with several other mini-scandals that bubbled up in February, including President Bush's National Guard service, a doctored photograph showing Kerry with Jane Fonda, and various Web outlets' willingness to publish embargoed exit poll data during primary elections. All these stories involve media gatekeepers expressing anxiety about losing control of the gate. Amateurs have increasing access to information once kept safely within the walls of the professional media, and they are doing whatever they want with it. As Bob Steele, a senior faculty member at the Poynter Institute, lamented to Jurkowitz, "The means of dissemination have changed, and what is really significant, of course, is that anybody can own the printing press."

Others see the proliferation of publishers as a positive development, and enjoy poking fun at the grumpy graybeards. In the words of *Slate* columnist Jack Shafer, who has drawn establishment fire for championing the right to publish breaking exit poll data, "You're going up against a journalistic priesthood, and that priesthood feels threatened."

The current exit polling consortium, the National Election Pool, makes all its paying members sign an agreement to suppress the numbers on election day until the polls close. But as Shafer points out, "journalists love to gossip," so word quickly leaks to such eager publishers as *Slate*, *The Drudge Report*, *National Review Online*, and *Wonkette*. "It's supposed to be proprietary, because we promised Congress in painful hearings we wouldn't let out any statistics," Linda Mason of CBS told *The Atlanta Jour-*



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*nal-Constitution*. "Drudge is breaking a promise we made. It's annoying."

But the promise being broken is an agreement between the news organizations and the National Election Pool. Non-participating reporters aren't parties to that pact, and as Shafer has noted, "Journalists aren't in the business of concealing information but in setting it free."

Shafer wrote that in a *Slate* debate with Steve Lovelady, managing editor of the *Columbia Journalism Review*'s CampaignDesk.org, which repeatedly has criticized sites that publish exit poll data early. Lovelady's reply demonstrated nicely how legitimate concern over journalistic practices is often inextricably linked with gatekeeper hostility toward upstarts. His argument, in *Slate* and elsewhere, quickly morphs into a weblog bashing session. "We've said it before and we'll say again: The great thing about the Internet is that anyone can start a blog—and the terrible thing about the Internet is that anyone can start a blog," he wrote. "Weblogs that aspire to affect public affairs, including this one, are piggybacking on the extraordinary freedoms that the U.S. Constitution guarantees the press."

There are two decent non-blog-related arguments for not letting the masses know what Dan Rather knows on election night. They're well stated by John Ellis, the former Fox News election data consultant who famously helped call the 2000 presidential election for his cousin George W. Bush at 2:15 a.m. (and less famously withdrew the call an hour later, once the Florida Election Commission announced that its previous numbers were faulty). He points out that "often the information [in exit polls] is unreliable": There are several different interpretative models that can be used, there are multiple "tranches" of information that get spit out during a day, and voters don't always tell the truth about what they did in the ballot booth. The second argument: "If my guy was losing by 15, and I was listening to [Rush] Limbaugh, I might think, 'Well shit, I'm not going to vote when I go home, I'm just gonna work out or something.'"

Shafer's answer to the turnout conundrum is refreshingly blunt. "Journalists are not in the democracy racket," he wrote to Lovelady. "They're not in the game of empowering the populace. They are not social engineers. They need not think out the first, second, and third possible repercussion of most stories they write."

As for the less-than-ironclad reliability of exit polls, that's a problem arguably best addressed by allowing the maximum number of people to read, publish, and chew on those numbers at will. When only 10,000 people in the country have access to sensitive, breaking information, that scarcity will drive up the price of both the data and the interpretation of it. Those outside the church walls, meanwhile, will distort the importance and even content of what's inside. Open the floodgates, and three things will happen: The exaggerated impact of the data will be lessened, consumers will become far more sophisticated about calibrating its accuracy, and the information itself will be improved by distributed intelligence.

The same might be argued for Drudge's publishing the latest rumors about reporters digging up scandal stories. Most readers already build in a Drudge discount, and meanwhile a horde of new reporters, professional and amateur, are set on the trail of a potentially newsworthy story (even if the potential newsworthiness of the Kerry tale was mostly lost on me). "It essentially raises the marginal productivity of every other reporter to go and find that story," says University of Chicago economist Steven Levitt, who has written widely about the role of information in markets. "We'll get a lot more stories, a lot better information as a result."

Levitt also hypothesizes that such revelations could have a negative effect on news gathering as well, by reducing the likelihood that an investigative hack will be first to a scoop, and he points out that false information—especially when spread deliberately—is downright damaging. John Ellis certainly knows from his own experience of prematurely calling the 2000 election what it's like to be on the other end of a scandal-sniffing press. ("The damage in terms of my consulting business was palpable," he says. "It shut me down, basically.") But that's another argument for allowing for several tiers of news credibility and trusting consumers' ability to sort information. If a story gets trapped in *National Enquirer/Daily Mirror* limbo, readers will be smart enough to apply the appropriate salt.

*The New York Times* and Matt Drudge may despise each other, but if they both do their jobs well, we all win. ◻

*Contributing Editor Matt Welch (mwelch@reason.com) writes about media and politics for Canada's National Post.*

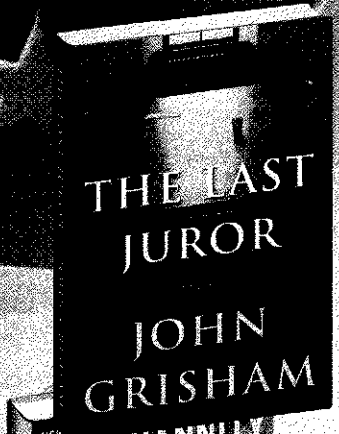


LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# AMERICAN COMPASS™

The Conservative Alternative

## Introducing a great new way

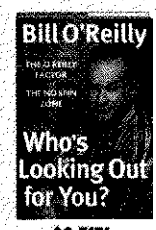



Grab a courtside seat for Grisham's latest gripping thriller! When a small-town Mississippi reporter helps convict a brutal murderer, the killer gets a short sentence and heads home to wreak havoc on Ford County and its most famous young journalist.
**28-1625** ~~$27.95~~ **20¢**

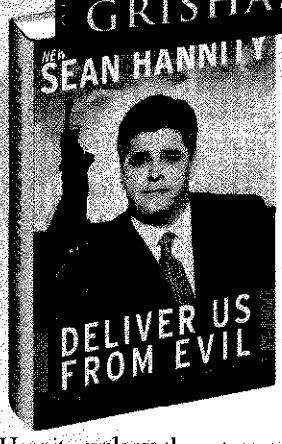
**49-0818**
~~$27.95~~ **20¢**

**69-0267**
~~$27.95~~ **20¢**

**78-7322**
~~$24.95~~ **20¢**



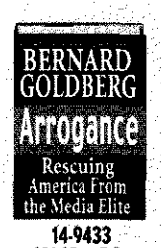

**00-7176**
~~$24.95~~ **20¢**



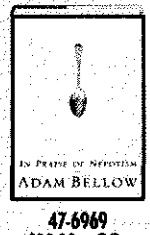

Hannity explores the nature of evil and offers global solutions for defeating terrorism, despotism and liberalism.
**29-1055** ~~$26.95~~ **20¢**

**84-9259**
~~$26.00~~ **20¢**

**00-7457**
~~$25.95~~ **20¢**




**14-9433**
~~$26.95~~ **20¢**




**47-6969**
~~$30.00~~ **20¢**

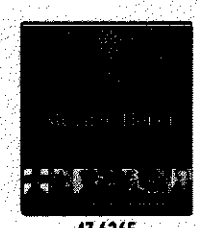
**58-0430**
~~$25.95~~ **20¢**

**44-9634**
~~$24.00~~ **20¢**

**69-0390**
~~$22.99~~ **20¢**

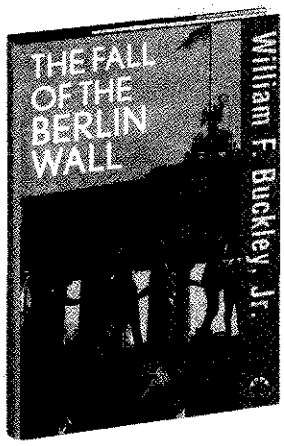
**39-0389**
~~$21.95~~ **20¢**

**18-0693**
~~$27.50~~ **20¢**



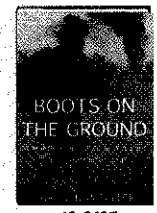
**47-6365**
~~$40.00~~ **20¢**

**Join us today and save up to $178**
off publishers' edition prices




Buckley discusses the end of the cold war, how it came about and the lessons we can learn from it.
**29-0388** ~~$19.95~~ **20¢**

**74-9290**
~~$30.00~~ **20¢**



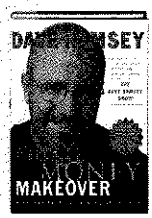

**19-0197**
~~$24.95~~ **20¢**

**20-2100**
~~$25.95~~ **20¢**

**18-9076**
~~$35.00~~ **20¢**

**67-4426**
~~$29.95~~ **20¢**

**39-0411**
~~$24.99~~ **20¢**




**38-2360**
~~$24.99~~ **20¢**

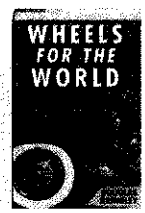
*Softcover*

**49-0273**
~~$18.95~~ **20¢**

**07-5924**
~~$39.95~~ **20¢**

**78-4012**
~~$24.95~~ **20¢**

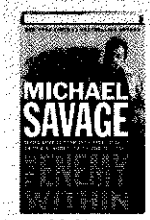
**38-4422**
~~$24.95~~ **20¢**




**27-5159**
~~$29.95~~ **20¢**

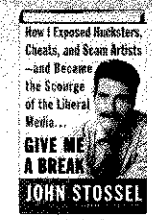
**www.joinAmericanCompass.com**


LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

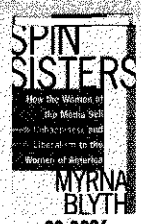



38-3954
~~$27.99~~ 20¢

38-4572
~~$29.95~~ 20¢

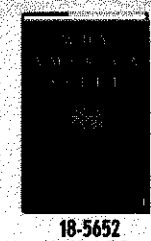



18-8383
~~$24.95~~ 20¢

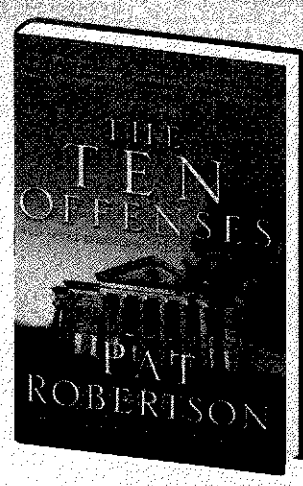



89-0036
~~$24.95~~ 20¢

98-3446
~~$25.95~~ 20¢



18-5652
~~$24.95~~ 20¢




# to get all the right books!

68-6283
~~$14.00~~ 20¢

08-5065
~~$21.95~~ 20¢

28-6966
~~$23.00~~ 20¢

28-7111
~~$29.95~~ 20¢

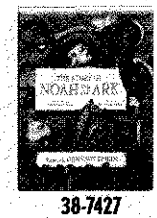
28-1815
~~$26.95~~ 20¢

49-0471
~~$22.95~~ 20¢

38-1410
~~$35.00~~ 20¢

49-0497
~~$10.99~~ 20¢

22-0409
~~$16.95~~ 20¢




38-7427
~~$18.95~~ 20¢

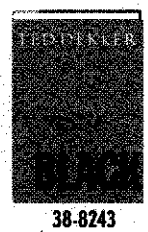
18-7294
~~$17.00~~ 20¢

Softcover

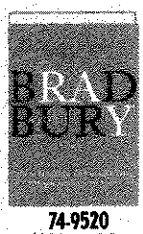
38-1867
~~$25.00~~ 20¢

27-6652
~~$27.95~~ 20¢

27-6247
~~$24.95~~ 20¢



38-8243
~~$10.00~~ 20¢

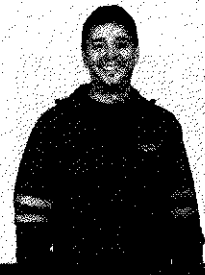



74-9520
~~$29.95~~ 20¢

28-8889
~~$26.95~~ 20¢

Recover your faith and reclaim God's eternal truths with a fresh look at each of the Ten Commandments.
**29-0741** ~~$18.99~~ 20¢

**Take 5 books for $1 Plus a FREE Gift!** *with membership*



**Your FREE Weatherproof Jacket Features:**

- Water-resistant shell
- Hood and collar drawstrings
- Fold-away hood
- Elastic cuffs
- Kangaroo pockets with storm flag placket

current affairs ★ faith ★ family matters ★ bestsellers ★ history ★ sports ★ military

**JOIN *AMERICAN COMPASS* TODAY!**

**1. Membership is easy!** Just buy 5 books for $1. Your bill (including shipping and handling) will come with your books and FREE Gift when membership is confirmed unless otherwise notified. **2. Satisfaction is guaranteed.** If for any reason you're not satisfied with your Introductory Package, please return it within 20 days of receipt at our expense. Your membership will be canceled and you'll owe nothing. **3. Save up to 50% off publishers' edition prices.** Every book we offer is a high-quality, full-text edition sometimes altered in size. Just purchase at least 4 more books at regular Club prices within the next 2 years. Shipping and handling (plus sales tax, where applicable) is added to each order. After buying 4 books you may resign at any time or remain a member for as long as you wish. **4. More savings now!** Buy a 6th book now for just $5.95, plus shipping and handling, and reduce your membership agreement to only 3 books in the next 2 years. **5. The FREE Club magazine** is sent to you 12 times a year (about every 4 weeks). Each issue reviews the main selections and a variety of alternate books. **6. Ordering is risk-free.** Main selections are sent to you automatically. To cancel shipment—or to order other books—simply return your Member Reply Form by the marked date or log on to our Web site. Shipping and handling (plus sales tax, where applicable) is added to each order. You'll always have 10 days to decide. If you get unwanted books because your Member Reply Form came late, return them at our expense and we'll credit your account. **7. Save time,** join online at www.joinAmericanCompass.com.

912AB RSN 5/1/04

AMERICAN COMPASS™
*The Conservative Alternative*
P.O. Box 6452, Camp Hill, PA 17012-6452

☐ **YES!** Please enroll me as a member of *American Compass* according to the risk-free membership plan described in this ad and send me the 5 books indicated by the numbers I have filled in below. Bill me $1, plus shipping and handling. I agree to buy 4 more books within the next 2 years.

INDICATE SELECTIONS HERE: 4-AA CON-1-774-05-1

| | | |
|---|---|---|
| — | — | — |
| — | — | — |

**SAVE MORE NOW!** Send me this book now and reduce my commitment to only 3 books. Bill me an added $5.95, plus shipping and handling. Books that count as 2 choices are not eligible.

Name _____

Address _____ Apt. _____

City _____

State _____ Zip _____

SATISFACTION GUARANTEED: If for any reason you're not satisfied with your Introductory Package, please return it within 20 days of receipt at our expense. Your membership will be canceled and you'll owe nothing.

**www.joinAmericanCompass.com**

**Do you have a telephone?**
☐ Yes ☐ No

**Have you bought anything through direct mail in the past?**
☐ Yes ☐ No

**How have you paid for your mail order purchase?**
(check all that apply)
☐ Cash ☐ Credit Card
☐ Check ☐ Money Order

**How many books have you purchased in the past year?**
☐ None ☐ 1-5 ☐ 6 or more

#301

Membership subject to approval.

American Compass™ is a trademark of the operator of the Club. Unauthorized use prohibited. All rights reserved. Members accepted in U.S.A. Sales tax added where applicable.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# Traditional Prejudices

## The anti-Semitism of Alexander Solzhenitsyn

CONTROVERSY RAGES AS charges of anti-Semitism dog a beloved cultural icon. No, not Mel Gibson: The man at the center of *this* debate is the Russian writer Alexander Solzhenitsyn.

Solzhenitsyn, author of *The Gulag Archipelago*, was once a revered symbol of moral resistance to the Soviet state. He probably deserves more credit than any other person for stripping away communism's moral prestige among Western intellectuals.

Exiled from the Soviet Union in 1974, Solzhenitsyn alienated some erstwhile admirers with his Russian nationalism and his antipathy toward Western-style democracy; after his return to Russia 20 years later, the public's reverence soon faded to polite indifference. Still, he retains his special status among the older intelligentsia and many Western anti-communists.

Accusations of anti-Semitism are not new for Solzhenitsyn. Critics have long pointed to passages in *The Gulag Archipelago* that selectively list the Jewish last names of labor camp commandants. And Solzhenitsyn's historical novel *August 1914*, published in English in 1972, emphasizes the Jewishness of Dmitry Bogrov, assassin of Russia's reformist prime minister Pyotr Stolypin.

Solzhenitsyn has claimed that he was merely telling it like it was, but *August 1914* embellishes history considerably: While Bogrov was a thoroughly assimilated revolutionary from a family of third-generation converts, Solzhenitsyn saddles him with a Jewish first name, Mordko (a diminutive of Mordecai), and the fictitious motive of trying to undermine the Russian state to help the Jews.

Then came the news that Solzhenitsyn was writing a major history of the Jews in Russia. The first volume of *Dvesti let vmeste* (*Two Hundred Years Together*), covering the period from 1795 to 1916, appeared in 2001; the second volume followed in 2003. According to Solzhenitsyn, the work was intended to give an objective and balanced account of Russian-Jewish relations: "I appeal to both sides—the Russians and the Jews—for patient mutual understanding and admission of their own share of sin." This comment seems suspicious in itself, given that, for most of their history in Russia, Jews were victims of systematic oppression and violence. To talk about mutual guilt is a bit like asking blacks to accept their share of blame for Jim Crow.

What does Solzhenitsyn see as the Jews' share of sin? Mainly, their participation in revolutionary activities in the late 19th and early 20th centuries, and then in the Soviet government. He rejects claims that communism in Russia was the result of a Jewish plot but asserts that Jews played a "disproportionate role" in the creation of a terrorist state "insensitive to the Russian people and disconnected from Russian history."

Just what does "disproportionate" mean? Jews were overrepresented among the socialist revolutionaries, but as the historian Richard Pipes points out in *The New Republic*, they were also overrepresented among Russian capitalists. What's more, says Pipes, "the ranks of the revolutionaries were certainly dominated by Russians." A three-part series by Mark Deitch in the Russian daily *Moskovskiy komsomolets* last September noted that there were 43 Jews among the 300 major players on the Russian political scene in 1917—and only 16 of them were Bolsheviks.

Solzhenitsyn asserts that "the population of Russia, as a whole, regarded the new [revolutionary] terror as a Jewish terror"—and seeks, if not to validate, then at least to excuse this perception. Deitch subjects Solzhenitsyn's account



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to a withering analysis. After quoting historian Lev Krichevsky's statement that "in 1918, at the time of the Red Terror, ethnic minorities made up about 50 percent of the central staff of the Cheka [the secret police]," Solzhenitsyn adds that "Jews were quite prominent" among those minorities.

But he omits Krichevsky's actual data, which show that Jews made up less than 4 percent of the Cheka staff and held 8 percent of executive positions. On other occasions, though, Solzhenitsyn is not averse to exact numbers: He points out, for example, that six of the 12 Cheka investigators in the "department for the suppression of counter-revolution" were Jewish.

An even more devastating critique of Solzhenitsyn's *oeuvre* appeared in the U.S.-based Russian Jewish weekly *Vestnik*. The author, émigré journalist Semyon Reznik, analyzes a curious work self-published in Moscow in 2000 by one Anatoly Sidorchenko, a collection that includes two essays by Sidorchenko himself and one attributed to Solzhenitsyn, "Jews in the USSR and in the Future Russia."

In a June 2000 interview in *Moscow News*, Solzhenitsyn dismissed the publication as "a vile stunt by a mentally ill person." Yet he failed to explicitly disavow his authorship—and a comparison between the essay (dated 1968) and *Two Hundred Years Together* reveals astonishing similarities, including entire paragraphs that are virtually identical.

The major difference is that the essay abounds in passages that verge on overt Jew bashing. The second volume of *Two Hundred Years Together* mentions a band of "'militant atheists' led by Gubelman-Yaroslavsky" who trashed Russian Orthodox churches. The name Gubelman is the only reference to the man's Jewishness. The corresponding passage in the 1968 essay reads: "The man who trashed Orthodox Christianity was Yemelyan Yaroslavsky—a Jew, Minei Izrailevich Gubelman." It contains another line about Jews tramping through Christian churches with cigarettes in their teeth.

Almost none of this has received any attention in the Western press. The first volume of *Two Hundred Years Together*, which has yet to be translated into English, has drawn mixed commentary, invariably accompanied by the qualification that Solzhenitsyn is obviously not anti-Semitic. "Solzhenitsyn, in fact, is not anti-Semitic; his books are not anti-Semitic, and he is not, in his personal relations, anti-Jewish," David Remnick wrote in *The New Yorker* in August 2001.

In *The New Republic*, Pipes wrote that while Solzhenitsyn is too eager to exonerate czarist Russia of mistreating its Jewish subjects, and as a consequence is sometimes insensitive to the latter's predicament, "at least he absolves himself of the taint of anti-Semitism."

This sweeping exoneration is puzzling. As an example of Solzhenitsyn's reverence for traditionalist Jews, Pipes quotes his assertion, "The preservation of the Jewish people for more than two thousand years in diaspora arouses amazement and respect." Yet he omits the not-so-flattering next lines: "However, if we take a closer look: in some periods...this unity was achieved by the oppressive methods of the kagals [Jewish self-governing bodies], and one no longer knows if these methods should be respected simply because they stemmed from religious tradition. At least, for us Russians, even a small dose of such isolationism is treated as a repulsive fault."

Even stranger is an essay in the November 2002 *History Today*. There John Klier, a historian at London's University College, describes the charges of anti-Semitism as "misguided." Then he writes that in his account of the pogroms of the early 20th century, Solzhenitsyn is far more concerned with exonerating the good name of the Russian people than he is with the suffering of the Jews, and that on occasion he accepts the czarist government's canards blaming the pogroms on provocations by the Jews themselves.

And that's not anti-Semitic? It's doubtful that an American writer who took a similar attitude toward the lynchings in the South would be absolved of the taint of racism.

How to explain this leniency? Perhaps it is simply too painful to consider that the great moral beacon of the communist days might be tainted with bigotry. But while the writer's role in Soviet-era history undoubtedly deserves respect, that does not require blindness to his flaws.

Solzhenitsyn's anti-communism, it is increasingly clear, was never a defense of individual freedom. It was a defense of a different kind of collectivism: ethnic, religious, and traditionalist. This is far from the only time that such a mind-set—anti-secular, anti-modern, anti-individualist—has been linked to prejudice against those who don't fit into the collective. ▮

*Contributing Editor Cathy Young (CathyYoung1@cs.com) is a columnist for The Boston Globe.*



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# Guests, Sí; Workers, No

## Our most delicate thinkers have a problem with hard work.

President Bush's immigration reform plan is garnering praise from many would-be immigrant workers and their would-be employers. But it has a substantial political downside for an important subset of opinion-makers, who are disproportionately likely to vote, donate, and otherwise shape the political landscape beyond their numbers. The problem is, Bush's plan is based on immigrants as guest workers.

It's not the "guest" part that bothers these voters. It's the "workers."

I was already familiar with this mindset from any number of party conversations and bar arguments, but a couple of recent magazine articles silently articulate this view in a particularly absurd way.

The more prominent is the cover story in the March *Atlantic Monthly*, cover-lined "Dispatches from The Nanny Wars." The piece is a long *cri de coeur* over how author Caitlin Flanagan's generation of professional women has betrayed the values of feminism—hell, the values of humanity—through a shameful vice: hiring women from the Third World to work as nannies.

Flanagan goes on for pages and pages of rueful head shaking over this crime, which apparently makes women the modern-day equivalents of the plantation class of the Olde South. Never once does this very smart writer with many thousands of words to play with even offer a hint of an adumbration of a clue that it isn't an unequivocal moral wrong to give someone a job doing your domestic work. Flanagan merely assumes that the average *Atlantic* reader will surely see just how evil is the act of offering someone less well off than you compensation for labor.

It's certainly annoying to have to clean kitchens, mop bathrooms, wash endless loads of laundry, cope with mewling children, and confront the other rows that the modern nanny must hoe. But is it that controversial—in Flanagan's case, apparently literally unthinkable—to suggest that it might be a blessing for an average Central American woman to be doing those tasks in an upscale suburban home rather than, say, seamstressing in a poorly ventilated warehouse, working industrial food prep, or whatever she'd be doing if she stayed in Central America (a place she's already shown a demonstrated preference to escape from)?

Unquestionably, your nanny is less fortunate than you are. She has less disposable wealth, less security, fewer long-term options. But she is not your slave, and you have not condemned her to hell.

The kind of work that typically occupies *mule* immigrant workers is called into deep moral suspicion in a cover story in *L.A. Weekly* with the must-to-avoid headline "Harvest of Pain." It's all about how guilty you should feel enjoying a Caesar salad because an actual human being had to pick that lettuce, under conditions and for a salary that we suspect you, ordering a $5.95 Caesar salad, would find inadequate or maybe even miserable.

Conditions often suck for lettuce pickers by any standard, no doubt; decent affordable housing is hard to find near their work, and some companies are so unscrupulous they take advantage of their legally disadvantaged workers by paying them less than their due. Bush's plan, by legalizing them, could do a lot to help at least that last problem.

Lots of work is so inherently unpleasant and wearying that, believe it or not, people demand compensation for doing it. The end of work for anything but creativity and pleasure is a consummation devoutly to be wished, and the human race is tantalizingly close to it. (This is why people are even able to entertain the attitude that manual labor for low pay is a moral evil to be abhorred.) The day may come—soon—when the nanobots are making our Caesar salad from molecular scratch and robots are swaddling our infants.

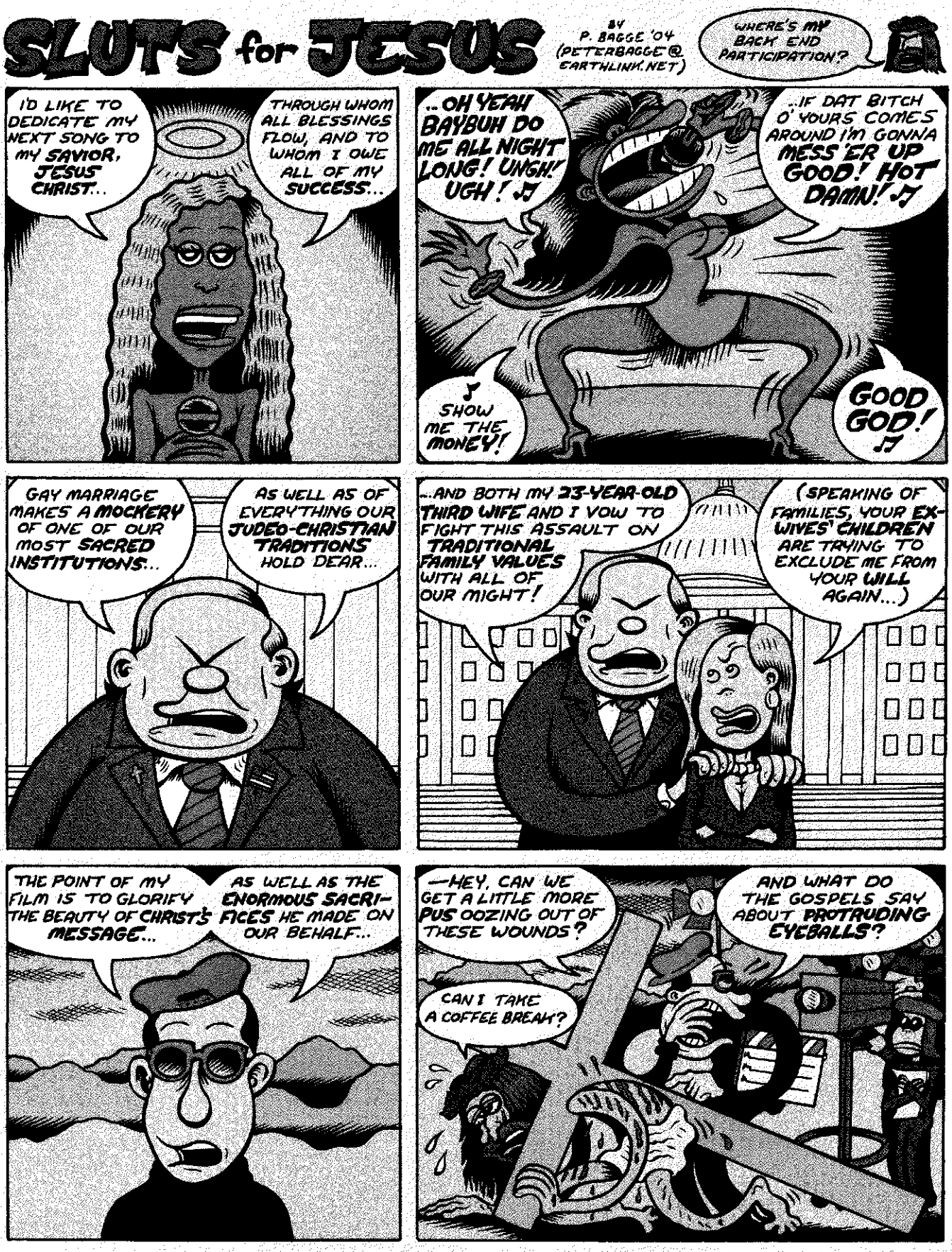
Until then, real human beings want real jobs to better their subjectively perceived circumstances. Bush's reform may help them do so. If we are ever to achieve a political consensus that welcomes more immigration, it will have to be one that openly embraces the reality of crappy jobs. ■

*Brian Doherty (bdoherty@reason.com) is a senior editor of* reason.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# SLUTS for JESUS

BY P. BAGGE '04 (PETERBAGGE@EARTHLINK.NET)


WHERE'S MY BACK END PARTICIPATION?
I'D LIKE TO DEDICATE MY NEXT SONG TO MY SAVIOR, JESUS CHRIST...
THROUGH WHOM ALL BLESSINGS FLOW, AND TO WHOM I OWE ALL OF MY SUCCESS...
..OH YEAH BAYBUH DO ME ALL NIGHT LONG! UNGH! UGH! ♪
..IF DAT BITCH O' YOURS COMES AROUND I'M GONNA MESS 'ER UP GOOD! HOT DAMN! ♪
♪ SHOW ME THE MONEY!
GOOD GOD! ♪
GAY MARRIAGE MAKES A MOCKERY OF ONE OF OUR MOST SACRED INSTITUTIONS...
AS WELL AS OF EVERYTHING OUR JUDEO-CHRISTIAN TRADITIONS HOLD DEAR...
...AND BOTH MY 23-YEAR-OLD THIRD WIFE AND I VOW TO FIGHT THIS ASSAULT ON TRADITIONAL FAMILY VALUES WITH ALL OF OUR MIGHT!
(SPEAKING OF FAMILIES, YOUR EX-WIVES' CHILDREN ARE TRYING TO EXCLUDE ME FROM YOUR WILL AGAIN...)
THE POINT OF MY FILM IS TO GLORIFY THE BEAUTY OF CHRIST'S MESSAGE...
AS WELL AS THE ENORMOUS SACRIFICES HE MADE ON OUR BEHALF...
—HEY, CAN WE GET A LITTLE MORE PUS OOZING OUT OF THESE WOUNDS?
AND WHAT DO THE GOSPELS SAY ABOUT PROTRUDING EYEBALLS?
CAN I TAKE A COFFEE BREAK?



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# Xtreme Measures

## Washington's new crackdown on pornography

*G. Beato*

ONLY THE MAN himself can say for certain, but I'm pretty sure that Attorney General John Ashcroft would disapprove of the Realdoll, a life-size $5,999 sex dummy that boasts "a completely articulated skeleton which allows for anatomically correct positioning." Nor, I imagine, would he have any kind words for the Extreme Bonk'er™ sex trapeze, the mango-scented Cum-Kleen personal wipes, or the thousands of hardcore videotapes and DVDs that are for sale here at the Adult Entertainment Expo, a bustling trade show for sexual entrepreneurs sponsored by the adult video trade magazine *AVN* in January at the Venetian Hotel in Las Vegas.

Perhaps what Ashcroft would find most distressing about the event, however, is the crowd it has attracted. Elsewhere at the Venetian, in the casino's own Guggenheim-Hermitage Museum, where Picassos and Manets adorn walls designed by prize-winning architect Rem Koolhaas, admission is only $15, but there are few takers. At the Adult Entertainment Expo, it's a different story. The show is open to fans as well as those in the business, and by noon hundreds of people are standing in line for tickets, ready to hand over $40 for a chance to meet the stars of *Weapons of Ass Destruction 2*, *The Incredible Gulp*, and other X-rated fare.

Ultimately, nearly 16,000 fans will attend the four-day show. Those in line today attest to the democratizing power of double-penetration videos: Businessmen toting expensive digital cameras stand next to leather-clad bikers, who stand next to frat dudes in baseball caps and sports jerseys. There are whites, blacks, Asians, and Latinos here, and many of them are female. There are people in wheelchairs, aging hippies, bespectacled lesbian hipsters, curious tourists, a member of the Backstreet Boys, and Mike Tyson. The only other place where such diversity flourishes is at the Department of Motor Vehicles.

Inside the show, it's one giant gang hug as packs of happy fans pose for snapshots with half-dressed porn stars. The biggest draw, though, is Larry Flynt, arch-nemesis of Jerry Falwell, numerous federal prosecutors, and propriety in general. Dressed in a crisp navy blazer, his head as big and waxy as any senator's, Flynt signs copies of *Hustler* for an endless procession of admirers with efficient magnanimity. For a man who claims to have lost his virginity to a chicken, he looks remarkably statesmanlike.

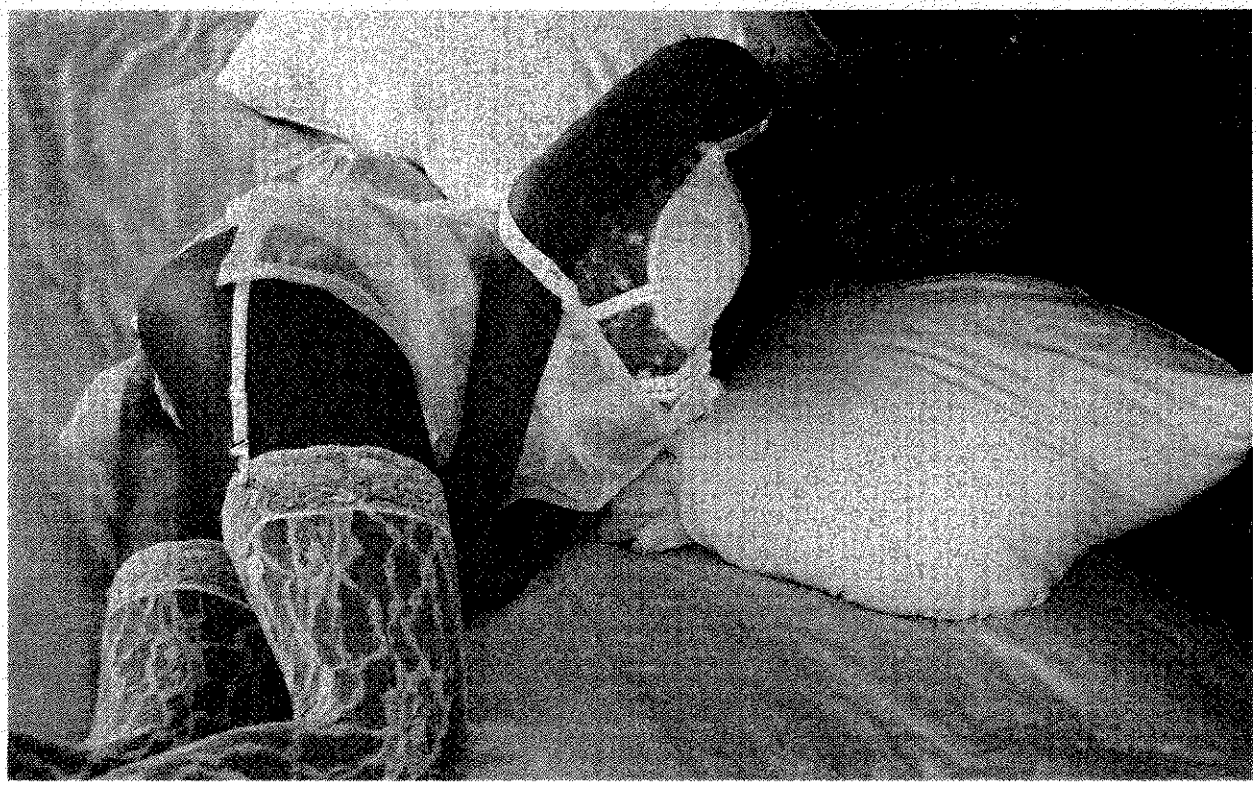
A few dozen yards away, in a small, no-frills exhibition booth, a pair of less beloved pornographers holds court. Robert Zicari, known in the industry as Rob Black, is a stocky 30-year-old who looks like he could play the role of, say, Wiseguy No. 3 on *The Sopranos*. He wears a black velour tracksuit with white piping and white high-top sneakers, and his dark, auburn-tinged hair is cut short on the sides and longer and somewhat spiky on top. He has a trim goatee, a wide face, and an air of restless, Barnumesque intelligence, always figuring angles and always looking for opportunities to stir things up.

His wife Janet, known in the industry as Lizzy Borden, has long, bleached blonde hair and the enigmatic smile of a slutty Mona Lisa. At 26, she's already a six-year porn veteran, starting out as a performer in the late 1990s, then switching to directing after she started to date Zicari. Under the banner of their company, Extreme Associates, the pair are known for producing material that even fellow pornographers find objectionable. Their videos are products of a jaded, hypermediated era: explicit porn coupled with the over-the-top gore of slasher movies and the stunts and gross-out spectacles of reality TV. In the Extreme universe, women drink viscous

Images courtesy Adam & Eve



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED



cocktails of semen, spit, and other bodily fluids. Dead fish are considered sex toys. U.S. Marines save a female reporter from Osama bin Laden, then rape her themselves after cutting off Bin Laden's head. Jesus comes down off the cross and rapes an angel.

God has yet to render judgment on that particular blasphemy, but others are showing less patience. Decorating the Extreme Associates booth at the Adult Expo is a poster of Janet Zicari posing inside a boxing ring, ready to battle in fishnet stockings, a skimpy, cut-off T-shirt, and fists swathed in Everlast hand-wraps. "Fight for your right to watch porn," the poster urges in bold red print. In smaller print, on a ring card announcing the next bout in the never-ending Culture Wars, the text reads "Lizzy Borden vs. Mary Beth."

"Mary Beth" is Mary Beth Buchanan, U.S. attorney for the Western District of Pennsylvania. On August 7, 2003, Buchanan announced that a Pittsburgh federal grand jury had indicted the Zicaris on 10 counts of violating federal obscenity laws. Social conservatives hope and civil libertarians fear that this case marks a new stage in Washington's crackdown on pornography, a sign that Ashcroft's Department of Justice is—take your pick—a champion of traditional values or a threat to free expression.

The Zicaris face a more concrete threat: They each face maximum sentences of 50 years in prison and $2.5 million fines. By comparison, the maximum sentence for actual rape in Pennsylvania is 20 years.

## Destroying Civilization...Again

Although the First Amendment promises that Congress "shall make no law...abridging the freedom of speech," obscenity prosecutions are almost as old as the nation itself. In 1815 six citizens of Pennsylvania were tried and convicted for privately exhibiting, for money, "a certain lewd, wicked, scandalous, infamous and obscene painting, representing a man in an obscene, impudent and indecent posture with a woman." In 1842 the first federal law against obscenity was passed, and in subsequent decades several more were added to the books.

But what was it, exactly, that qualified certain books and pictures as obscene? In 1868 an English case, *Regina v. Hicklin*, established a test that was ultimately adopted in the United States as well: If a work had the power to "deprave and corrupt those whose minds are open to such immoral influences," it was obscene and therefore illegal. This definition evolved over time until 1973, when, in the course of ruling on the case *Miller v. California* (which reaffirmed that the First Amendment does not protect obscenity), Chief

Realdoll, courtesy Abyss Creations



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Justice Warren Burger established a three-part test for determining obscenity that was so jurisprudentially limber that it has managed to survive for more than 30 years. To be considered obscene, Burger wrote, a work had to appeal to the prurient interest as determined by "the average person, applying contemporary community standards"; it had to depict or describe sexual conduct in a "patently offensive" way; and, taken as a whole, it had to lack serious literary, artistic, political, or scientific value.

While Burger also offered some advice on what general types of material *might* qualify as obscene, he ultimately left final determinations in the hands of jurors, so that individual communities could apply their own local standards on a case-by-case basis. In effect, then, the *Miller* test permits everything and nothing. A jury in California might decide a specific work is perfectly legal, while a jury in another state might say the same work is obscene.

In an age of suicide jets and anthrax spam, obscenity cases feel faintly anachronistic, the comfort crimes of the legal system. If prosecutors still have time to punish Americans for thoughtcrime, bad taste, or simply a robust instinct for overexposure, the world can't be *that* close to Armageddon.

Those who take it upon themselves to ensure the nation's moral fitness have a different perspective, of course. They blame pornography for divorce, the dissolution of families, the debasement of sex, and general spiritual dissolution. If left unchecked, they suggest, it's a cultural virus that has the same capacity to destroy America as a thousand suitcase nukes.

This dire take on the situation isn't particularly novel. In 1873 Anthony Comstock, America's first great vice hunter, lamented the state of the union in his diary. "Why is it that every public play must have a naked woman?" he complained. "It is disgusting; and pernicious to the young. It seems as though we were living in an age of lust." In 1965 Citizens for Decent Literature produced a movie called *Perversion for Profit*. "A floodtide of filth is engulfing our country in the form of newsstand obscenity," its narrator intoned. "It is threatening to pervert an entire generation of our American children." In June 2002 John Ashcroft continued the tune, unbroken for over a century now, at a symposium for federal prosecutors in Columbia, South Carolina: "Obscenity invades our homes persistently through the mail, phone, VCR, cable TV, and now the Internet. Never before has so much obscene material been so easily accessible to minors."

Never before, indeed, except for the last time and the time before that. Perhaps because we somehow managed to survive Comstock's age of lust and *Perversion for Profit*'s floodtide of filth, and perhaps because the idea of the federal government as marriage counselor lacks a constitutional underpinning, the pornography-as-moral-threat argument isn't entirely convincing to many Americans. To make their crusade more appealing to such people, vice hunters frequently emphasize the even darker perils of porn. Invariably, they link consensual adult pornography with child pornography and other forms of child abuse. Invariably, they champion the notion that porn can systematically turn otherwise healthy, law-abiding individuals into violent sexual criminals.

Consider the August 2003 conviction of Michael J. Corbett and his ex-wife, Sharon Bates. Their crime: selling *Outdoor Pooping Paradise, Scat Sampler #2,* and approximately 50 other videos and DVDs via their Web site. For this, Corbett received an 18-month prison sentence, three years' probation, and a $30,000 fine. Bates got a 13-month sentence, three years' probation, and a

In an age of suicide jets and anthrax spam, obscenity cases feel anachronistic. If prosecutors still have time to punish Americans for thoughtcrime, bad taste, or simply a robust instinct for overexposure, the world can't be *that* close to Armageddon.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

$10,000 fine. They also forfeited $15,010 seized from their bank accounts and the equipment they used to produce their videos. In order to save their home, which was legally the government's to seize because it was used in the sale of obscene materials, they agreed to pay an additional $60,000. Finally, their Internet domain name, Girlspooping.com, is now the property of the United States.

In the wake of this conviction, Deputy Assistant Attorney General John G. Malcolm, head of the Justice Department's Child Exploitation and Obscenity Section (CEOS), strained to convey the import of the victory: "This type of material has a coarsening and desensitizing effect on our society, and can lead some to commit other degrading, and sometimes violent, sexual offenses against others."

I'll spare you the details, but the affidavit that summarizes the content of these videos makes absolutely no mention of violence or any other form of coercion, either real or feigned. Instead, the videos mostly appear to depict solo, purely elective pooping and urination in a sexualized context. Gross? Yes. Potentially illegal under the arbitrary standards of federal obscenity laws? Sure. But how was Malcolm able to conclude, either empirically or rationally, that these happy celebrations of human elimination cause some of their viewers to commit "violent sexual offenses" against others?

### Making the Porn Industry's Fears a Reality

While today's vice hunters employ rhetoric like that on a regular basis, what may be most unsettling about many of them is how reasonable they appear to be. In conversation, Morality in Media President Robert Peters is genial and open-minded, a far cry from the stereotypical finger-wagging crotch cop. When I ask him what he hopes to accomplish in his Sisyphean battle against obscenity (he's worked for Morality in Media since 1985), he replies: "If we could just send a message to people that this is not what sex is all about, we will have won more than half the battle. Whether you're a creationist or a Darwinist, sex is linked to something greater than masturbating to depictions of other people having sex. It's linked to a person. We have a capacity to love."

Mary Beth Buchanan, the U.S. attorney overseeing the Extreme Associates prosecution, is, like Peters, even-keeled and pragmatic. "We don't have the resources to prosecute every instance of the illegal distribution of obscenity," she concedes. "But if the law isn't enforced, the material is going to proliferate and become more violent, more degrading, and more disgusting. So there have to be limits."

In other words, just go after the worst of the worst, right? Not quite. Today's vice hunters may seem relatively tolerant at first, but their tolerance has definite limits. Buchanan, for example, isn't concerned only about content; when it comes to obscenity prosecutions, size matters too. "We're trying to focus our resources on the material that causes the greatest harm," she says. "And the greatest harm could be caused by producing the most egregious material, but it could also be caused by a distributor with a large area of distribution."

This is exactly what today's most fervent vice hunters want to hear. To them, cases against fringe operations like Girlspooping.com are little more than annoying foreplay. "The prosecution bar is far too high," complained Jan LaRue, chief counsel of Concerned Women of America, in the aftermath of the Girlspooping.com conviction. "Come on, DOJ. Go after the big guys....It's time to make the porn industry's fears a reality. It's time to send a message to the white collars on Wall Street who think selling porn is a good way to improve the bottom line."

U.S. viewers rented 75 million adult videos in 1985, 490 million in 1992, and 686 million in 1998. The increase in annual rentals was actually highest during the time that the Department of Justice was most aggressively prosecuting obscenity cases.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Lizzy Borden and Rob Black, courtesy Extreme Associates

Three years ago, LaRue and her anti-porn colleagues believed George W. Bush and John Ashcroft were the answer to their prayers. Throughout history, vice hunters have blamed the scourge of pornography on various nefarious entities: the French, the Communists, the Mafia, and of course Satan himself. But most recently, an even greater fiend has taken the blame for the current floodtide of filth. "For the eight years during Bill Clinton's administration, [obscenity] laws were not enforced, and that's why the sale of obscene pornography became so rampant across the country and on the Internet," charges Citizens for Community Values President Phil Burress.

According to Morality in Media's Peters, federal obscenity prosecutions climaxed at 80 during 1989, then dwindled to six in 2000. "If you want to make certain offenses a priority, you have to make sure that you have the resources to investigate them, and that you have prosecutors who are trained to prosecute them," says Mary Beth Buchanan, who served as an assistant U.S. attorney from 1988 to 2001. "During the Clinton administration, those things were not happening."

According to the *American Family Association Journal*, George W. Bush promised during the 2000 campaign that "his administration would make it a point to enforce obscenity laws." To seal the deal, he even signed a "letter of commitment" after repeated entreaties from the American Family Association. Ashcroft made similar promises in the early days of his tenure, meeting with representatives from more than a dozen anti-pornography groups in May 2001. "We gave him a ton of information and actual evidence as to who the major pornographers were," Phil Burress recalls, "and he seemed determined to do something about it."

Then came 9/11. Momentarily, at least, the terrors of the Code Orange Age were deemed a greater threat to the nation's well-being than pornography. The vice hunters were sympathetic at first, but they've grown increasingly restless as the promised prosecutions have failed to materialize in sufficient numbers. The announcement of the Extreme Associates indictment in August pleased them to a certain degree, because while Extreme isn't a major player in the porn industry, it is the highest-profile producer that the Department of Justice has gone after in more than 10 years. Still, they yearn for a bigger, more ambitious crackdown, one that will put the fear of prosecution into the hearts of every hard-core pornographer, including the most mainstream ones. "I've almost done handstands with joy about what's happening with digital downloading," says Robert Peters, referring to the music industry's decision to file lawsuits against individuals who engage in unauthorized file sharing. "There's no way they're going to stop downloading through law enforcement alone, but it really has sent a phenomenal message. Supposedly, file sharing has been cut by 50 percent. So a relatively little law enforcement could go a long way."

"Aggressive [obscenity] prosecution had a major impact in the '80s," says Phil Burress. "They took homes, they took boats, they took cars, they took property. They took millions and millions of dollars in assets, and they basically drove the pornographers back underground and made the industry smaller."



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In certain respects, this is true. Campaigns like Project Postporn, a Department of Justice initiative which targeted pornographers who marketed their products through mail-order catalogs, did put many companies out of business. Still, the government's efforts had little impact on the demand for adult videos. According to *AVN*, U.S. viewers rented 75 million adult videos in 1985, 490 million in 1992, and 686 million in 1998. In other words, the increase in annual rentals was actually highest during the time that the Department of Justice was most aggressively prosecuting obscenity cases.

Phil Harvey, a First Amendment activist and the founder of the mail-order catalog Adam & Eve, was the target of two obscenity indictments in the '80s. (Full disclosure: He has also donated to the Reason Foundation, the nonprofit that publishes this magazine.) It took him eight years, $3 million, and one lawsuit to successfully defend his company against the charges the federal government brought against it, but there was an unexpected upside to this effort to put him out of business: Adam & Eve grew substantially during those years, as the government improved its market opportunities by shutting down other mail-order companies. "For about four years, there were fewer outlets and less competition for us," he says. "Other competitors stayed away because it was a high-risk environment."

Vice hunters sometimes talk as if law enforcement, or the lack thereof, is the only factor in the proliferation of porn. Press them, and they'll acknowledge that technology has played a major role too. In the '80s, VCRs brought porn into the nation's living rooms; in the '90s, premium cable and pay-per-view eliminated the need for furtive trips to the video store, and the Internet brought porn into the workplace. Still, none of these developments would matter much if there were no demand for the product: Porn proliferates mostly because millions of people enjoy porn.

The vice hunters press on, though, organizing, proselytizing, and constantly demanding that police and prosecutors enforce obscenity laws. While a few figures in the adult entertainment industry have defended their rights with a similar zeal, passive expediency is a more common reaction.

"Too many people in my business haven't stood up and fought," exclaims Robert Zicari. "The feds are kicking themselves in the balls right now because they hit me first. Anybody else in this industry would have already copped a plea, and that's just what the government wants. They don't want millions of people debating this issue. They don't want a big firestorm of publicity. They want to do this quietly."

### Son of a Pornographer

Zicari is a second-generation pornographer. In the late '60s, before he was born, his father owned nearly 40 adult bookstores in upstate New York and the surrounding area. By the time Zicari was a teenager, his father had scaled back his operation to just four stores. Zicari started working at one

## Tommy Chong's Bongs

### A stoner icon goes to jail.

*G. Beato*

Is U.S. Attorney Mary Beth Buchanan the meanest movie critic in the country? Before her negative review of the Extreme Associates catalog, she gave a thumbs-down to actor/comedian/stoner icon Tommy Chong for his role in the operation of Nice Dreams Enterprises, a family business that manufactured and distributed bongs, urinalysis kits, and related products.

Chong's home was raided in February 2003 as part of the Justice Department's nationwide crackdown against 55 companies and individuals who, according to a rarely enforced federal law, were illegally selling drug paraphernalia over the Internet. In May 2003, Chong pleaded guilty to the charge of conspiracy to distribute paraphernalia, and on October 8, 2003, he started serving a nine-month sentence at Taft Correctional Institution, a privately run federal prison in central California. Chong also received a $20,000 fine and forfeited $103,000; when he's released in July 2004 he'll be on probation for one year.

"He wasn't the biggest supplier. He was a relatively new player," Buchanan said at the time of Chong's sentencing. "But he had the ability to market products like no other."

Thanks to quotes like that, and the fact that Chong received a harsher sentence than anyone else who was caught in the crackdown, many people have taken up his cause, with Web sites like freetommychong.org charging that the 65-year-old comedian is being "unfairly targeted for prosecution because of his celebrity status."

But Buchanan insists this isn't the case. "This was a long-term investigation where the goal was to identify all the



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of them at the age of 14, sorting quarters from the peep show booths into rolls in an upstairs room. "I got to keep whatever didn't fit into these $100 boxes, so I'd hit the batting cages with, like, $80 worth of quarters," he remembers.

When Zicari turned 18, he started managing his father's store in Rochester. But he had other ambitions too, including college. In 1996, however, without telling his father, he used some of his school money to produce and direct his first porn movie, *Tender Loins*. After Zicari completed a second video in similarly clandestine fashion, his father found out and they had a temporary falling-out. During that time, Zicari moved to Los Angeles and created the character Rob Black, a loudmouthed provocateur who was determined to shake up the porn industry by producing filthy, twisted porn that boasted as much violent misogyny as standard Hollywood fare, along with lots and lots of spit, gaping orifices, and surreal images like men ejaculating onto crackers at an outdoor picnic. The difference between Zicari and Black? "I have bad taste," explains Zicari, "but Rob Black has even more bad taste."

Zicari immediately alienated many of his porn industry brethren. In 1996, when he first started releasing videos, the aggressive federal crackdowns of the late '80s and early '90s felt like a thing of the past. Suddenly, the industry was penetrating the mainstream in a completely consensual, very profitable manner, everyone was making money, and almost no one was going to prison. To keep things this way, virtually every producer of commercial consequence scrupulously obeyed a set of unwritten guidelines: Urination, defecation, and rape and incest themes were all taboo, and bondage videos could not show penetration.

Then people like Zicari and a former UPI photographer who called himself Max Hardcore started flouting standard industry decorum. Their tapes were controversial, but thanks to their novelty, the attention they received, and their taboo nature, they were also popular. In 1998 *AVN* named Zicari Best Director at its annual awards show. Soon other producers were jumping on the shock porn bandwagon, and with the Internet making it increasingly easy for anyone, including international producers, to make and distribute pornography, the kind of material that was relatively hard to find just five years ago is now only a mouse click away.

As all of this played out, however, Zicari himself seemed to lose interest in the pornography business. In 1999 he founded a professional wrestling league called Xtreme Pro Wrestling. In 2001 he ran for mayor of Los Angeles. But with the inauguration of George W. Bush raising the specter of another federal crackdown on obscenity, Zicari found a new cause to take up. In an episode of the PBS newsmagazine *Frontline* that aired in February 2002, an interviewer asked Zicari if he worried about the possibility of an obscenity charge. "I'm not out there saying I want to be the test case," Zicari replied. "But I will be the test case."

companies that were marketing these products over the Internet," she says. "Over time we compiled a list of companies, and Nice Dreams Enterprises happened to be one of them."

According to Buchanan, the Justice Department decided to prosecute Chong rather than his son Paris, who ran Nice Dreams, because the department's investigation showed that Chong had bankrolled the company, actively promoted its products, and "ultimately had greater involvement in it than any other individual"—even though he wasn't an officer of the company or a member of its board of directors. As for the relatively long sentence, Buchanan points out that Chong's case didn't make it to trial, or even to a grand jury. Instead, he and his attorney negotiated a deal before a formal indictment was brought against him. "If he'd gone to trial and been convicted, he could have gotten even longer," Buchanan argues.

While support for Chong grows on the Internet, there's at least one other person besides Buchanan who shows little sympathy for the prisoner's plight. "Someone wanted to do a story for *High Times* about me and Tommy Chong," says Extreme Associates founder Robert Zicari. "I said, 'Dude, I love Cheech and Chong movies, and when I used to smoke weed they were the best things to watch. But what he did was still illegal!' Selling drug paraphernalia, and telling a federal agent that this pipe is good for this type of marijuana, that's illegal. Making a fuck tape is not illegal. If there's a federal law that says a girl sucking a dick on camera is a crime, I'll abide by it. But as long as they tell me, 'Well, it's not illegal here, but it is illegal there,' well, what's the difference? And until then, do I wanna do something with Tommy Chong? Why? He's fucking guilty! I don't want to do anything with someone who's guilty."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Zicari's appearance on the show put him on the Justice Department's radar, and in the spring of 2002, under the direction of Mary Beth Buchanan, the federal government started pursuing a case against Extreme Associates. Eventually, a postal inspector used an "undercover credit card" to purchase five videotapes from the company and to join the members-only section of its Web site and view at least six of the video clips that were available there. Buchanan presented this material to a grand jury, and on August 6, 2003, it filed an indictment against Extreme Associates and Robert and Janet Zicari, charging them with conspiracy, sending obscene materials through the mail, and distributing obscene materials via an interactive computer service.

While Buchanan says her office has received numerous requests from citizens to enforce obscenity laws, did any Pennsylvania resident actually complain that Extreme Associates content was available in the state? "I can't comment on that," Buchanan says when I ask her. Zicari, on the other hand, has plenty to say on the subject. "Nobody walked into a video store and was forced to look at this stuff," he argues. "You couldn't even go into a store to purchase *Forced Entry*. We knew it was strong material, so we didn't even make it available to video stores. You had to go to our Web site or call us up and request it."

Unlike the *Miller* test, Zicari's own definition of obscenity is extremely specific. "You know what obscenity is to me in the adult industry?" he says. "It's a child getting fucked, or a dog. And people laugh at me when I say dog. They're like, 'Dog? Who gives a shit about a dog?' But personally, I find that fucking obscene."

Zicari's general sense of decency actually extends beyond prohibiting child porn and dog sex. "I'm not a person who thinks that everybody should watch pornography," he insists. "If you want to open up a giant porno store with jack booths and stuff like that, and you're gonna plop it inside a [residential] community with nice lawns, and they don't want it, I'm the first person who's like, 'Dude, you're totally right, it's kind of fucked up we put this place right here in the middle of your neighborhood.'" But he also believes that people should be able to view his videos in the privacy of their own homes. And he thinks that he should have the right to make and sell them without facing obscenity prosecutions.

To a certain extent, the federal government agrees with him. In the 1968 Supreme Court case *Stanley v. Georgia*, Justice Thurgood Marshall concluded that "the mere private possession of obscene matter cannot constitutionally be made a crime." In other words, it's OK to own obscene materials—you just can't buy them.

Now, thanks to the way technology has changed how pornography is distributed, Zicari and his attorney, First Amendment specialist Louis Sirkin, plan to argue that this state of affairs no longer makes sense. "In 1973, the *Miller* test had merits," says Zicari. "It gave people a way to control these seedy fucking porno stores in their community. Now, a private citizen buys my shit from the privacy of his own home, and that's where he watches it. Why is the community involved? If you happen to live in an Amish town, does that mean you're not allowed to watch porno or horror tapes? Anything the Amish would object to, you can't watch in your own home?"

The Internet further complicates matters, because anything that's available online is essentially available to all communities. In the analog world, pornographers have often avoided shipping their wares to places known to have very strict community standards. But if a pornographer wants to make his content available to potential custom-

Is the difference between eating semen-spattered dog food in a porn movie and eating raw pig rectums on *Fear Factor* really so pronounced that the former deserves a jail sentence while the latter becomes a prime-time major network staple?



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ers in New York or San Francisco, people who live in other regions will have access to it too. If the Zicaris and Extreme Associates are convicted on the charge of using an interactive computer service to distribute obscene material, they'll have to shut down their Web site and forfeit their domain name to the federal government. Effectively, the community standards of Pittsburgh will serve as the community standards for the world.

As of yet, no trial date has been set, but Robert Zicari thinks the government's case may already be crumbling. "When they raided our office, they seized five movies," he says. "But then they only indicted us on three. So either the grand jury said those two other movies weren't obscene, or the government didn't present those movies to the grand jury. And one of those movies was *Ass Clowns #3*, where Jesus comes off the cross after being crucified and rapes an angel. So now my question is, why is the rape in *Ass Clowns* all right, but the rape in *Forced Entry* isn't?"

Zicari has a lot of similar questions, if it comes to that. For example, why is pornography held to a higher standard of decorum than other genres of pop culture? Are the two amateurishly simulated murders in *Forced Entry* somehow more offensive than the dozens of expertly simulated murders in *Jason vs. Freddy* or *Gangs of New York*? Is the difference between eating semen-spattered dog food in a porn movie and eating raw pig rectums on *Fear Factor* really so pronounced that the former deserves a jail sentence while the latter becomes a prime-time major network staple?

"What's the difference between us and Hollywood?" asks Zicari. "We show explicit sex, and they don't. And they make hundreds of millions of dollars, and we're going to have to spend $300,000 [in legal fees] to keep from going to jail. And it's a shame, because it makes me bitter about the United States, and I'm like the biggest fucking patriot motherfucker in the world."

To help finance his case, Zicari has reached out to some of his better-funded peers in the porn business, including Larry Flynt. So far, he hasn't gotten much response. "There's a lot of people in this industry who think it's not them, it's me," Zicari says. "But honestly, if those motherfuckers think that Ashcroft has hired 25 prosecutors to get me and that's it, then they are unbelievably delusional. Are you gonna tell me that Jerry Falwell sits at his desk, and he's got a box of porn, and it's divided into the porn he likes and the porn he doesn't like? You think he holds up a movie from [mainstream producer] Vivid and says, 'This is good porn!' You know what, man, he takes that box and says 'Burn it! Burn all of it! It's all fucking blasphemy!'"

Except for the swearing part, Zicari is undoubtedly right. In starting with him, though, he believes that the Justice Department is taking a risk. "This is the World Series, and they're the Boston Red Sox," he exclaims. "They're getting a chance that they haven't had in 9 billion years, and if they blow this, they can never come back. Because where can you go after a jury says there's nothing wrong with these movies? How do you go after a movie involving a husband and wife and the guy's wearing a condom? How do you get someone to go after that, when you couldn't even prosecute a tape where the guy comes in the girl's mouth, and then he fucking stabs her? This is their one shot, and they fucking know it."

### Meanwhile, in the Shadow of the Dildoes...

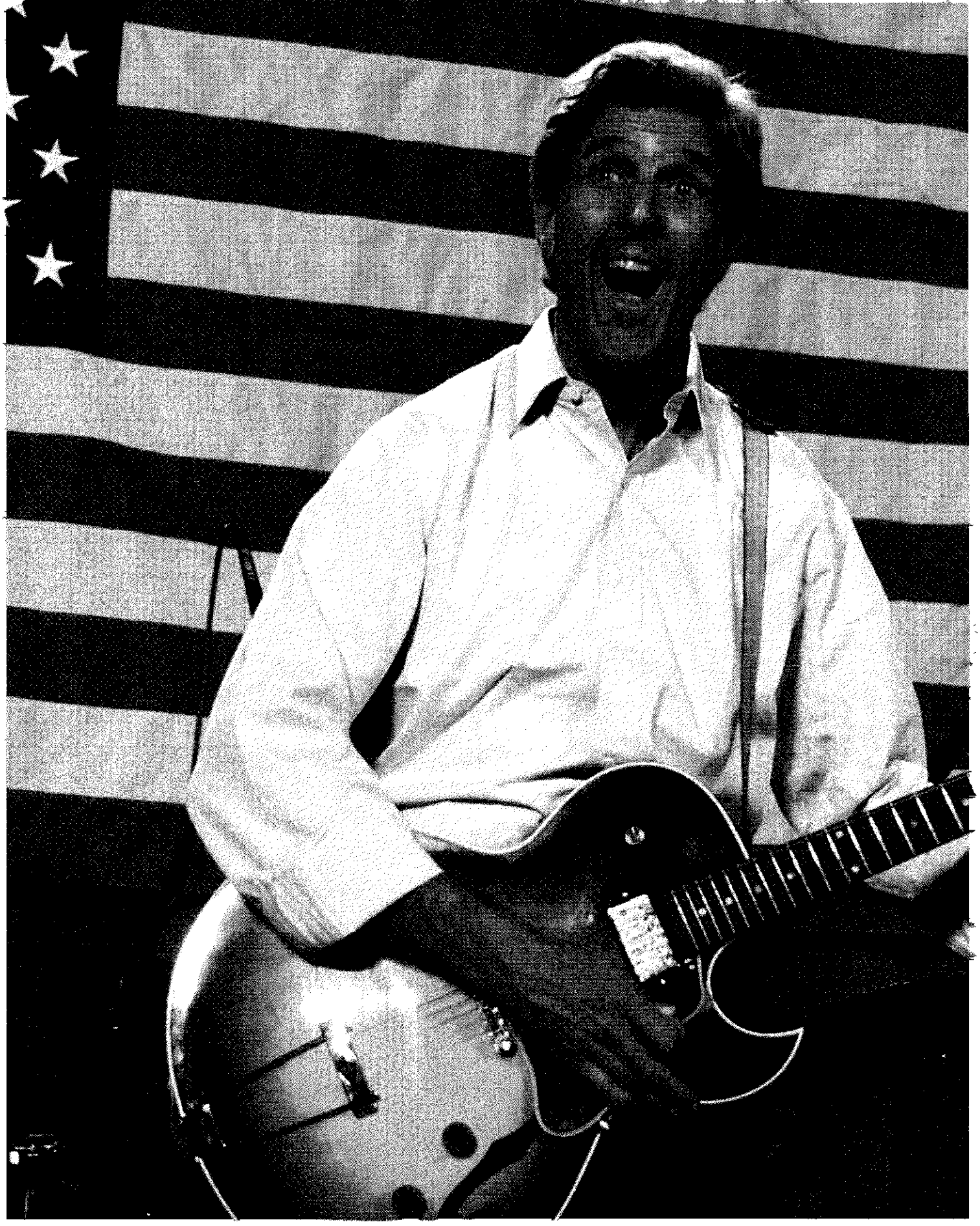
As the afternoon progresses at the Adult Entertainment Expo, the crowds only get bigger. In a small conference room downstairs from the main event, a seminar entitled "Key Legal Issues Facing the Adult Industry" is taking place. It lacks the flash of what's happening upstairs—there aren't any nubile strippers or artisan-quality dildoes on display, just Lou Sirkin, three other attorneys, and some PowerPoint slides. Each of these four speakers sounds notes of caution, gloom, and alarm, and to some observers, they probably seem a little paranoid, or at least unreasonably pessimistic. After all, haven't they checked out the show upstairs: the hundreds of booths, the vast array of products, the thousands of fans?

Still, they've been defending the adult industry for a long time, and they know how much certain people would like to shut it all down—not just Extreme Associates and its ilk, but every company in every booth on the floor above them, the whole shamelessly hedonistic spectacle. "I consider censorship a cancer," Sirkin warns at the end of his talk. "Once it starts, it spreads pretty rapidly." ▪

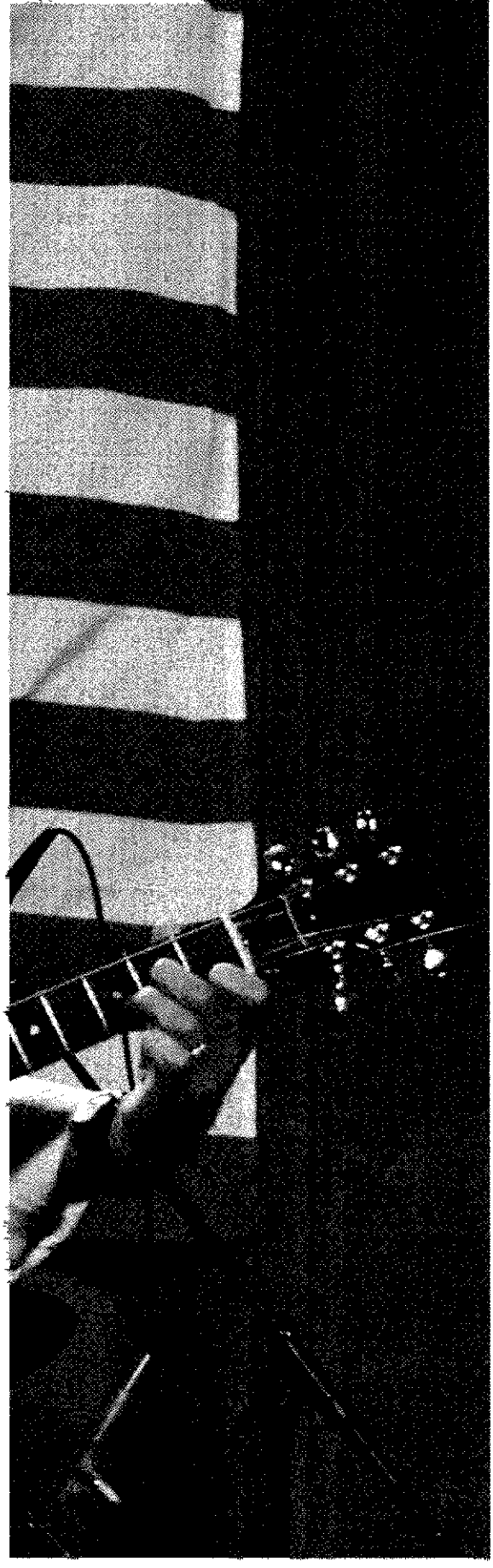
*G. Beato (gbeato@soundbitten.com) is a freelance journalist who has written for SPIN, The Washington Post, and many other publications, including his own Web site, Soundbitten.com.*



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED



John Kerry at a fundraising concert. © 2003 Ira Wyman/Picture Desk

# Backstage Passes

## What it takes to run for president in the age of media intimacy

*Charles Paul Freund*

America's real-time political explainers are a game bunch. There's nothing that happens in the course of a campaign, a speech, a candidate's TV appearance, or any event inside or outside the Beltway that they can't quickly filter, analyze, and judge. People such as CNN's Jeff Greenfield, Fox's Brit Hume, MSNBC's Chris Matthews, PBS' team of Mark Shields and David Brooks, and an overflowing green room of others like them are, in fact, pretty good at high-pressure instant analysis. They know the players, they've heard all the stump speeches, and there's not much that happens that they haven't seen before. That's what makes them experts.

So it was novel to see them all dumbfounded. This year's Democratic primaries presented them with a spectacle that no one could remember witnessing before: the Genteel Debate.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Once the field of Democratic contenders was past Iowa and New Hampshire, most of the candidates ceased having much to say about each other, even in high-profile TV "debates" in delegate-rich states such as Michigan. True, vanity candidates Dennis Kucinich and Al Sharpton kept up a rhetorical drumbeat, and once in a while even the major contenders spoke an impolite word, especially when approaching the March 2 "Super Tuesday" contests. But only the early candidate forums featured any really sharp exchanges, with various hopefuls going after early front-runner Howard Dean. Understandably, Dean didn't much like being a punching bag, and he reportedly asked Democratic Party Chairman Terry McAuliffe to intervene. But since one purpose of the primary season is, supposedly, to test the contenders without actually destroying them, the friction seemed not only normal but also desirable.

Then it all but stopped. No sooner had the candidates assembled in South Carolina than they became more gracious than a porch full of Old Charleston belles. John Kerry, the new pack leader coming out of New Hampshire, was pronounced the "winner" of that state's late-January debate if only because—and this was the phrase news junkies heard from every real-time analyst—"no one laid a glove on him." That was true as far as it went. The more intriguing realization was that no one had tried.

"I don't know if these guys were all auditioning for vice president or what was going on," a perplexed Mark Shields told a PBS audience the next day. "But campaigns are about differences. There are differences in value, differences in experience, differences in vision, differences in character, personality, and temperament. And boy, you wouldn't have known it last night." Shields' debating partner, *New York Times* columnist David Brooks, agreed. "I thought at the debate they were going to endorse [John Kerry] at the end," he said. "It was so gentle." Brooks found the debate "a waste of time."

## All Politics Is Personal

Was it? Shields, Brooks, and other high-profile refs of pro politics assumed the real value of such a debate is to draw attention to "difference" through rhetorical exchange. That obviously makes sense, and it is certainly true that such figures as Joe Lieberman and Wesley Clark allowed their candidacies to expire without really exploiting any of the televised debates and making a determined last-ditch rhetorical stand.

On the other hand, debate isn't what it used to be. It's not all-day exchanges between the likes of Lincoln and Douglas; it's not even the soundbites about, say, "missile gaps" that marked the Kennedy-Nixon contest a century later. During the last decade, rhetorical exchange has been playing second fiddle to a different phenomenon entirely: the display of identities.

In the course of the 2000 presidential race, I argued that, due partly to the growth of ever more invasive and intimate media and partly to the decline of a foreign military threat, presidential candidates were under continuing pressure to change their whole concept of campaigning. Since then the military dimension of the presidency obviously has reasserted itself, but the role of invasive media—which capture the once-private "backstage" activities of politicians and turn them into yet another public, front-stage forum—has only grown.

In "The New Presidential Identity" (November 2000), I wrote that geopolitical and technological changes "have resulted in a succession of quiet, interlocking political reactions. American leadership models, once limited to a handful of rhetorical types, are expanding to include different character roles; successful public life is becoming ever more self-revelatory; the relationship between citizens and their elected officials is becoming increasingly direct and personal; the traditional gatekeeper political press is losing its power and significance." This emerging political style, I claimed, "sounds less like politics as it has been practiced for decades than it does like the dynamics of popular culture."

The unfolding of the Democratic primary process appears to support the emerging "cultural" model of electioneering. That is, the political importance of personal exposure has continued to increase even as the candidates' ability to tell a compelling story about themselves has become an irreducible necessity. Indeed, the growing importance of these factors points toward a common point on the horizon: American politics may be undergoing a process that at least one observer has termed "feminization."

During the primary season, candidates with a good story to tell did much better than candidates without one. Conversely, candidates who sought to limit their personal exposure paid for it. In the



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

John Kerry is an old-fashioned senatorial blowhard, with a tendency to "orate." At the start of his initially unpromising campaign, he was quoting Alexis de Tocqueville to guys in bars.

meantime, Democratic voters simply ignored gatekeeper judgments about who was leading and who was lagging, continually reshaping the race from one primary to the next. Three candidacies stand out as illustrations of the cultural political process: those of Howard Dean, John Edwards, and John Kerry.

### Dean's Disintegration

Vermont's former governor is in some ways the most interesting, if only because his effort was the most resounding flop. Dean's campaign pioneered the use of the Internet to build an organization and raise funds, and it appeared to be so successful at this innovative strategy that some observers thought that he would, in effect, hijack the Democratic Party "brand." (Maybe the Democratic National Committee thought so too. The party apparatus seemed hostile to Dean's run, unconcerned with attacks on him, and anxious for him to quit the race.) Yet despite the fact that the gatekeeper press had anointed him the front-runner, Dean failed to win a single primary other than Vermont's in March, long after his candidacy was finished.

He based his campaign almost entirely on policy issues, especially his opposition to the Iraq war, and he spoke frequently of bringing fundamental change to Washington power politics. This strategy appealed to a core group of issue-oriented Dean enthusiasts, but it failed with everyone else.

Interestingly, Dean protected, to a nearly unprecedented degree, his and his family's privacy from media inquiry. As a result, there was very little in the way of character construction, and even less in the way of biographical storytelling, in his campaign; Dean's "backstage" story was off limits entirely. Except for his passion about foreign policy, health care, and "special interests," voters were offered little information about him and nothing personal at all.

In the end, however, a Dean "character" emerged anyway. Candidates cannot insulate themselves from political coverage that has become nearly ubiquitous. A TV camera is rolling virtually everywhere, and on those occasions when it's not, there's a blogger, a laptop, and a digital camera nearby. Dean's mediated "character"—especially footage in which he rudely ordered a hostile elderly voter in Iowa to sit down and shut up—apparently struck many people as intemperate, arrogant, and abrasive. (Also in Iowa, Dean engaged in an exchange of negative ads with the Dick Gephardt campaign, a media war that has repeatedly and plausibly been blamed for undermining the appeal of both candidates.)

Dean's efforts to address his persona problems came too late. In the course of the New Hampshire campaign, where he attempted to make adjustments in the wake of his Hawkeye State disaster, Dean fed his wife (who had otherwise been invisible) into the maw of a Diane Sawyer interview, identified himself as a "hockey dad," and, though he was among the more cerebral candidates in years, analyzed himself as too often "leading with his heart." (His wife allowed that he "is a good dancer.") Apparently concerned that his candidacy had developed minimal appeal to female voters, Dean began making New Hampshire appearances in the company of his mother. But it's far more difficult to build a positive "backstage" persona when voters already have assembled a negative one, and Dean's attempt came to nothing.

Obviously, the major echo left behind by the Dean campaign is the manic Iowa Scream that followed his deflating third-place finish in that state's caucuses. But the singular focus on that memorable performance tended to obscure the more important fact that Dean, to the consternation of much of the gatekeeper press, already had faded as a candi-



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

John Edwards represents a type that has emerged only recently: the Empath, a candidate who can identify not just with voters' interests but with their emotions.

date before he started screaming. The moral? If you don't shape your own persona and tell your own story, these don't become nonfactors. Rather, character and narrative become factors over which the campaign has surrendered control.

Of course, Dean did offer a series of high-profile endorsements, including one from Al Gore. All that accomplished, however, was to demonstrate that in an age of political intimacy, personal endorsements don't mean anything. Dean's was a campaign that understood one technological revolution—the Internet and its organizational opportunities—extremely well, but ignored the demands of the remainder of the technological environment.

### Edwards the Empath

The case of North Carolina Sen. John Edwards represents the flip side of Dean's failed campaign. Edwards' early candidacy was largely ignored by the mainstream press, yet he was able to connect with voters and establish his political credibility directly. How? It wasn't on the basis of his political credentials; Edwards entered the race as a retiring first-term senator without much of a record to brag about. It wasn't his effective organization either; Edwards didn't have much organization at all. Nor was it his history of leadership; Edwards made no such claim. What he had (along with money from his fellow trial lawyers) was a remarkable talent for storytelling.

The central pillar of Edwards' campaign was The Speech. We live, Edwards told audiences in every state, in Two Americas, one of them with good schools, good health care, etc.; the other without. The first America, the one where all the institutions work, exists for the benefit of the wealthy and privileged; the other America, where nothing works as well as it should, is for "everybody else." Furthermore, Edwards identified himself throughout the speech with "everybody else," focusing on his roots in "a rural mill town" in South Carolina where honest, simple people worked hard but eventually lost their jobs to impersonal globalization. Who can fix this broken country? According to his speech, Edwards can't do it alone, but all of us working together can "lift up" America.

It was a simple populist message, flavored with phrases borrowed from the rural Southern church and built on a well-worn political premise. (Benjamin Disraeli had used the trope of "two Britains" in the 19th century.) Yet the power of the speech is demonstrable: Edwards succeeded in melding a social and economic vision with an autobiographical story and, drawing on his experience as a jury-swaying trial lawyer, used his message to communicate empathy with his listeners. The speech was a startling performance in a post-rhetorical age; by all accounts it deeply impressed voters and even cynical political journalists, who never wrote a negative story about him. It catapulted Edwards into the role of major contender, despite his obvious lack of credentials for the office he sought, and it helped him survive the loss of all but one of the first 20 party primaries and caucuses.

Edwards' success in keeping his campaign going is evidence of the rise of a new political type made possible in a context of media intimacy. A variety of rhetorical and behavioral styles have dominated the presidency's two centuries. William Jennings Bryan and Jimmy Carter offered an essentially religious model; William McKinley and Calvin Coolidge adopted the public attitude of the taciturn businessman; Woodrow Wilson and Adlai Stevenson were professorial. A fading type, historically speaking, has been the military leader; a rising type, especially within the Democratic Party, has been the policy wonk.

Edwards represents a type that has emerged only recently: the Empath, a candidate who can



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

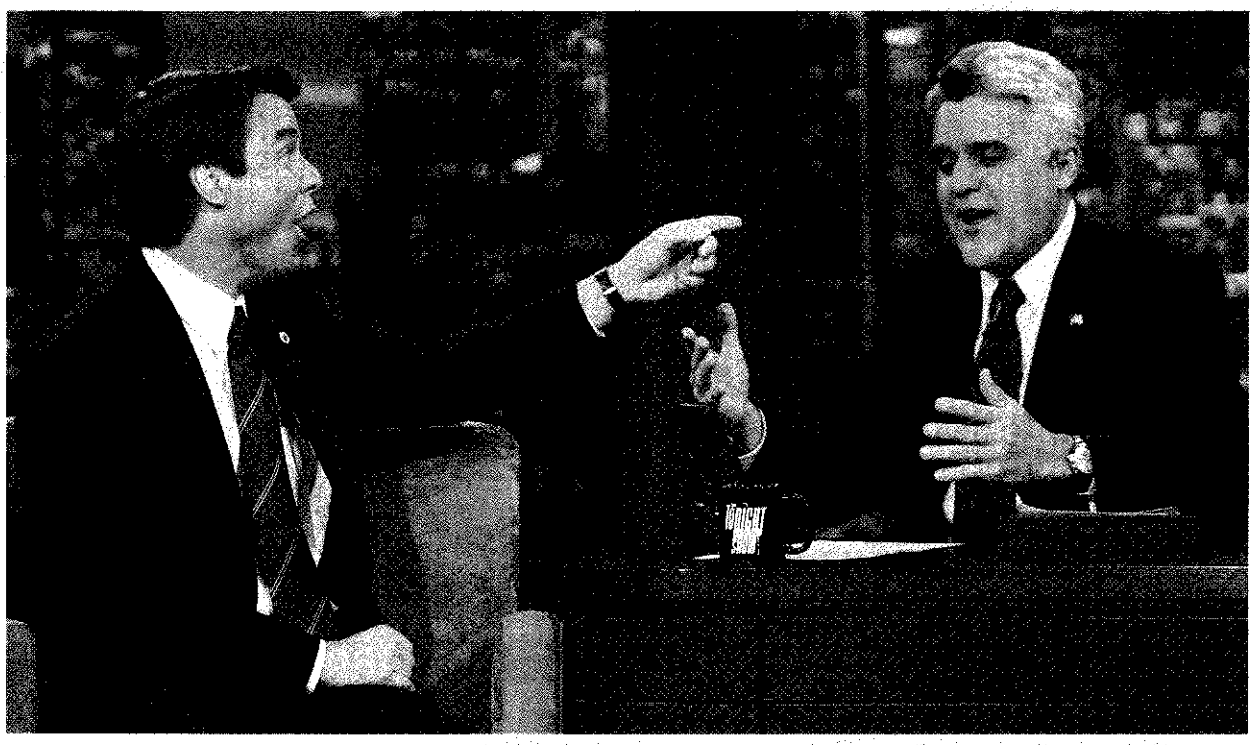
identify not just with voters' interests but with their emotions. The original political Empath was, of course, Bill Clinton, whose claims to feeling the nation's pain became a source of parody. The power of the type, however, can be measured by its effect on a decade of American political competition, including the first campaign of George W. Bush. In the 2000 campaign, even a Republican like Bush attempted to apply the rising trope of empathy by building a campaign on sustained claims to "compassion" and by making the welfare of children (another Clinton specialty) a cornerstone of his promised policy initiatives.

## Men of Feeling

This political pattern, involving empathy and a continuous policy reference to children, has led Carnes Lord of the Naval War College to speculate about the ongoing "feminization" of American politics. In *The Modern Prince: What Leaders Need to Know Now*, Lord argues that the foundations of the traditional leadership role have shifted, especially in nations that are dominated by a large, self-confident, and prosperous middle class. Would-be leaders of such societies can no longer draw on old-fashioned social hierarchies to justify their roles, and it is increasingly difficult to use war leadership as a model.

Lord is right. For much of the 20th century, would-be presidents sought to communicate the resolution they would bring to conflicts, both hot and cold, against a series of military and ideological rivals. Resolution, however, has given way to "compassion," even in the first Democratic presidential primary season since the September 11 attacks.

"Feminization," by the way, is a known cultural phenomenon involving a public shift in sensibility and the acceptable display of emotion. (Although *feminization* is sometimes used negatively or with misogynist overtones, in this case the term is strictly descriptive.) Great Britain experienced "feminization" in the 18th century, primarily through the influence of popular literature; it led to the appearance of the empathetic (and often lachrymose) Man of Feeling. The United States was to go through a similar cultural experience in the mid-19th century, also under the influence of (mostly) female writers and novelists. The phenomenon had important social and political consequences in both societies; it was part of the shift in outlook on the part of wealthier and more powerful classes toward the poor, women, slaves, and a variety of outgroups, and helped enable an era of expanding rights and socially corrective legislation. It's interesting that the transformation of presidential candidates into Men of Feeling has waited until so recently, but it is further evidence that politics have absorbed a cultural dynamic.



John Edwards on *The Tonight Show with Jay Leno*, ©2004 Reuters



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

### Kerry's War Story

The campaign of Massachusetts Sen. John Kerry makes for an intriguing case study in cultural electioneering, because despite his manifest lack of talent for the form Kerry did well in one primary after another. Kerry is an old-fashioned senatorial blowhard, with a tendency to "orate." At the start of his initially unpromising campaign, he was quoting Alexis de Tocqueville to guys in bars. Moreover, Kerry was tangled in his own Senate record. He spent his campaign harshly criticizing a series of bills and resolutions—from NAFTA to the Iraq war to No Child Left Behind—that he had supported with his votes. Kerry's efforts to explain his past support for legislation he now opposed often left him sounding politically incoherent.

An incoherent blowhard is not an exciting candidate, yet Kerry managed to get a bandwagon going. How? Primary voters repeatedly explained their support for Kerry by saying he was their most "electable" option. It was a curiously detached calculation that was, arguably, a fundamentally cultural decision because it involved a judgment less of the candidate than of the country at large. That unenthusiastic judgment has at least one notable implication: It's in large measure about Kerry being part of the political establishment. Thus, despite all the usual anti-Washington campaign rhetoric, Kerry's persona was deemed "electable" because it was deemed presidential, an entirely "Washington" dimension. Democratic political mythology notwithstanding, the fact that Kerry has long been a significant Washington figure was one of his most saleable aspects.

Kerry did bring important cultural tools to his race, however, including a family that interested people—his wife Teresa Heinz Kerry actually did interviews—and most of all an especially powerful autobiography. That story centered on Vietnam, where Kerry served with distinction and was thrice wounded. But the most politically decisive aspect of his Vietnam story is that he had other people telling it. The effect of fellow vet Jim Rassman, who in a series of appearances credited Kerry with saving his life under fire, was incalculable in helping establish a courageous Kerry "character" for voters to perceive.

Kerry is actually a controversial figure among Vietnam veterans, some of whom remain bitter about his 1970s accusations of widespread American war crimes and atrocities. That, however, never became a primary issue. On the contrary, Kerry surrounded himself with a "band of brothers" —vets who supported his candidacy—and successfully encouraged the spread of his positive military persona. Indeed, Kerry leveraged that military persona to drag George W. Bush into an early political exchange involving comparative autobiography. Thanks to remarks by Terry McAuliffe, who first drew the public comparison between Kerry's and Bush's records, the details of Bush's Air National Guard service of 30 years ago actually became a news theme, one that forced the White House to release documentation. Because this exchange pitted Kerry against the president, it lent stature to the senator's candidacy.

In short, Kerry appears to have benefited from a culture of political intimacy despite himself. His military record, which would have been of far less value in the 1990s than it was after 9/11, gave him a personal narrative sufficiently powerful to overcome his stylistic and rhetorical weaknesses. (In any event, his later campaign rhetoric was much sharper after he borrowed a more confrontational tone from the faltering Dean campaign and a more empathetic tone from Edwards.) Best of all, Kerry benefited from an increasingly independent party electorate, which paid no attention to mainstream punditry and cast Kerry's persona in a front-runner role.

After the Iowa caucuses, one veteran political reporter evoked the work of Theodore White, whose book-length insider accounts of presidential campaigns throughout the 1960s established an entire genre of "Making of the President" political journalism. "The higher the political office," White believed, "the more important the candidate." That is, people require a sense of character, of who is seeking their vote. Candidacies, such as Howard Dean's, that fail to address that requirement are increasingly likely to fail.

Evoking Theodore White is particularly apt these days. In White's era, voters interested in the backstage campaign story had to wait for accounts by White or one of his many imitators. No longer. White's insider genre is nearly dead, and not by accident. Much of the old political "backstage" has become part of the campaign. We're all insiders now. ▮

*Charles Paul Freund (cpf@reason.com) is a* **reason** *senior editor.*



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# MAKE LOVE!

***ALL NEW! Advanced Sexual Techniques* Video Series Arouses!**

It's more than pictures and words on a page. More than a clinical approach to sex. *Advanced Sexual Techniques* Video Series is where adventuresome lovers turn to rev up sexual power! 7 of 10 sex therapists recommend the *Better Sex* videos as a way to expand your sexual talents. To help you and your partner perfect your own lovemaking, *every act and variation is demonstrated by real couples in explicit detail.*

**100% Satisfaction Guaranteed!**

# MORE OFTEN!

**Be the Best Lover You Can Be! Guaranteed.** Here's how:

**Volume 1:** *Sexual Positions for Lovers* shares positions that SIZZLE, plus stimulating variations of some positions you may already enjoy. **Volume 2:** *G-Spot and Multiple Orgasms* shows you how to score the Ultimate O– time and again– guaranteed! **Volume 3:** And, if you wonder, Can I really do THAT? *10 Secrets to Great Sex* answers affirmatively with 10 well-kept secrets for intense sexual pleasure.

**WARNING:** *The Better Sex Video Series: Advanced Techniques is highly explicit and is intended for adults over the age of 18 only.*

# AND BETTER THAN EVER!

**2 FREE VIDEOS!** *Advanced Oral Sex Techniques Part 2*, our new 30-minute video, is guaranteed to increase your love-making pleasure. *Great Sex 7 Days A Week* shows you even more creative ways to ignite intense sexual excitement. Get both videos FREE when you order today!

***All orders shipped within 48 hours in plain packaging.***

*To order, call toll-free:* **1.800.955.0888, ext.8RM28** *24 hours/7days*
*Shop online at* **BetterSex.com**

**The Sinclair Intimacy Institute, ext.8RM28, PO Box 8865, Chapel Hill, NC 27515**

| Check desired format: | VHS | DVD | | Total |
|---|---|---|---|---|
| Advanced Oral Sex Techniques Part 2 *(Free with purchase)* | | | | FREE |
| Great Sex 7 Days A Week *(Free with purchase)* | | | | FREE |
| Vol. 1: Sexual Positions for Lovers | | | 19.95 | |
| Vol. 2: Ultimate Orgasms: Multiples and G-Spots | | | 19.95 | |
| Vol. 3: 10 Secrets to Great Sex | | | 19.95 | |
| **Buy The 3-Volume Set and Save $10!** | | | 49.85 | |
| | | | P & H | 5.00 |
| | | | **TOTAL** | |

☐ Bank Money Order ☐ Check ☐ VISA ☐ MC ☐ AMEX ☐ Discover

Card# _____ Exp. date _____

Name _____

Address _____

City _____ State _____ Zip _____

Signature _____

NC orders please add 7% sales tax. Canadian Orders add U.S. $6 shipping ■ Sorry– no cash or C.O.D. 8RM28

**For fastest service with credit cards or for a FREE catalog, call 1.800.955.0888 ext.8RM28 24 hours/7days a week.**

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# "It's So Simple, It's Ridiculous"

## Taxing times for 16th Amendment rebels

*Brian Doherty*

"I WON'T GO TO JAIL."

Bob Schulz announces this in late January to a rapt crowd of 200 gathered in an auditorium in Crystal City, Virginia. It's the first national conference of the We The People Foundation for Constitutional Education, a nonprofit advocacy group Schulz founded and runs.

He delivers his declaration not with reckless bravado but with a dignified, quiet, middle-management-lifer assurance, in keeping with his general mien. Schulz is a serious white male in a nice conservative dark suit, a former environmental engineer for both General Electric and the Environmental Protection Agency.

He's been married for 38 years to the same woman, and he has four children of whom he is quite proud. Yet when his kids begged him to reconsider the path that requires him to declare publicly that he won't go to jail, his wife Judy told them, "Your father put his country before his family, and I support him."

Schulz has stopped paying federal income tax, and he isn't afraid to let anyone, including the Internal Revenue Service (IRS), know it. Not only is he not paying, but he's also leading a national movement telling everyone else they shouldn't pay either.

When I talk to him after the conference, he doesn't seem quite so confident he won't go to jail. But he doesn't seem to care one way or the other. "Clearly [the government is] going to react," he says. "They may well sooner or later come at me in one way or another. You hear people say, 'Bob, they're going to take you out. Dozens of armed agents will come turn your life upside down.' You hear all these things. I have to say I have no fears. I fear God and God alone."

Americans have been protesting and avoiding taxes since before the U.S. officially existed. We are a nation born of tax protests. This tradition feeds the attitude that unites the serious, almost obsessed crowd here: the belief that they are the true patriots,

Lady Godiva rides nude through the streets of Coventry as a tax protest, circa 1050, artist unknown. ©CORBIS



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

staunch constitutionalists fiercely dedicated to the ideals that make America great. A radical transvaluation of values is going on right here in Crystal City. Far from being the very foundation of solid citizenry, acceding to the federal personal income tax is, among this crowd, an act of treason against what defines America: its Constitution and its "true laws."

Schulz's We The People Foundation is transforming the often subterranean struggle to deny the legitimacy of the income tax. For decades this movement has been an inchoate collection of small congregations following varied gurus. Schulz and his crew, by contrast, offer a unified church with a canon of Right Arguments. The anti-income tax movement now has, through Schulz, a united, highly activist national membership organization claiming around 5,000 dues-paying members, a mailing list of 64,000, and local coordinators in 39 states and 600 counties.

While in the past evangelists of the "income tax is a fraud" message have tended to sell books and seminars, the We The People Foundation has the advantage of being hard to blithely condemn as a scam. It is not a business selling advice but a nonprofit dedicated to spending money—more than $1 million since taking up this fight—to spread the word. Its founder claims Gandhi as his influence: From him Schulz learned that to fight an unjust tyranny, you need a proactive, nonviolent mass movement, and that is what he is trying to create.

The movement against the income tax has lately adopted one of the tropes that define an on-the-rise minority in modern America: Its members want to be called what they call themselves—the "tax honesty" movement—and not be slapped with the pejoratives that most people have known them by (if aware of them at all).

At the politest, their nemesis the IRS calls them "tax protesters." (Less politely, they've been known as "income tax cranks.") A woman who runs a small business making and selling display boards in Massachusetts, who claims to have not paid personal income tax for a few years now with no practical repercussions, tells me that "when people say 'tax protester movement,' it drives me nuts. I do not protest taxes. I think they are absolutely necessary. I protest illegal confiscation of assets, which is what the income tax is." She has no problem, she assures me, with sales taxes, property taxes, or corporate taxes.

The partisans of the tax honesty movement go beyond complaining that the income tax is too high, or that out-of-control IRS agents enforce it in thuggish ways. They claim, for a dizzyingly complicated variety of reasons, that there is no legal obligation to pay it. The continued life—and even flourishing—of that notion, in the face of obloquy, fines, and jail sentences, says something fascinating about a peculiarly American spirit of defiance. It may even say something encouraging about what it means to live in a nation of laws, not of men.

### "I Used to Be Normal, But..."

Bob Schulz has a long history of fighting the government in the name of constitutionally limited powers and proper procedure. His battles date back to 1979, when he successfully sued to halt a new sewage treatment system near Lake George in New York. (According to Schulz, the proposal ignored environmental impact requirements.) Since then he's been involved in more than 100 such lawsuits and won many.

All that is small beer compared to his latest crusade. Since 1999 Schulz has presented his contentions regarding the income tax's illegality to the IRS, the president, the Department of Justice (DOJ), and every member of Congress. He has humbly beseeched them to answer a list of questions regarding whether he, or any American citizen, has an actual constitutional, statutory, legal obligation to pay the federal income tax.

He's led marches around IRS headquarters in D.C., and he went on a brief hunger strike in 2001. In July of that year his persistence prompted representatives of the IRS and DOJ to promise to show up at a public meeting Schulz was organizing. They promised to lay forth their official arguments as to why we do indeed have a legal obligation to pay income tax. That meeting was scheduled for September 25–26, 2001. The 9/11 attacks made Schulz reschedule, and the feds bowed out of appearing at the rescheduled event. Schulz feels he has pursued every proper step to find an answer to his questions. Now, he says, it's time to fight.

When *The New York Times* asked IRS spokesman Terry Lemons why the Schulz petition was being ignored, Lemons "said that courts had upheld the validity of the tax laws and that the agency did not want to waste time and resources dealing with well-settled issues. Mr. Lemons added that the recent spate of enforcement actions taken by the IRS against promoters of abusive tax schemes...show other ways that government is answering the petition."

Not the answer the movement wants, obviously. But it's one they should have expected. Never has any court anywhere—much less the IRS—accepted as valid any of the many arguments the movement offers for how and



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

why there is no legal obligation for individuals to pay federal income tax. In fact, courts will fine you up to $25,000 for even raising them, insisting such arguments have been rejected so often by so many courts at so many levels that they are patently frivolous and time-wasting.

Despite this, the dominant vibe at this conference, even among those whose pursuit of these curious doctrines has led them to conflicts with government or employers, is hopeful in a religious sense. They clasp valiantly to belief in their own righteousness and the certainty that through that righteousness they one day will be delivered.

I eavesdrop on one smiling lady with a shock of short white hair telling a fellow attendee of her long fight over garnishment of her wages from a tax lien. It sounds like plenty of trouble came her way, and in the end the courts were taking her money anyway. But she was still cheerful, evincing no regret for the path she'd taken. Wrapping up her tale, she confided, with a smile and an only slightly wistful sigh, "I used to be normal, but...."

**The partisans of the tax honesty movement go beyond complaining that the income tax is too high, or that out-of-control IRS agents enforce it in thuggish ways. They claim there is no legal obligation to pay it.**

No one at the conference—from the man who tries to pay for his Au Bon Pain lunch with a privately minted silver coin to the airline employee whose union is getting tired of his fights over tax withholding—strikes me as merely fumbling for some scam to avoid paying taxes. Their concerns are higher than that. The Constitution and a properly limited government are their guiding lights. Indeed, the conference isn't only about the income tax: Panels about the Second Amendment, jury nullification, and the questionable pedigree of the Federal Reserve are also offered, and also well attended. Mel Gibson's controversial father, Hutton Gibson, gives a rousing speech on the need to fight the New World Order to defend our traditional liberties and is cheered heartily. Most everyone here seems aware there's a good chance they will pay a price far higher than the mere cash of taxes for pursuing the movement's difficult truth. When a speaker announces that his listeners need to be prepared to go to jail, almost all clap.

In one question-and-answer session, a woman airs her concerns about all the practical difficulties that accompany the tax honesty path. How, for example, can one get a mortgage loan without tax returns to show? She seems to be begging for some loophole in the loopholes—some reason she doesn't *have to* refrain from paying income taxes. But the crowd and Schulz are pitiless. After she offers up too many what-ifs and how-do-yous, Schulz acknowledges that this path of truth might not be for everyone—only, by implication, for the bravest and staunchest of patriots.

Reality does, however, toss the tax honesty movement the occasional sweet crumb of hope. A couple of the crumbs that materialized in the last year seemed substantial and nourishing at first nibble.

Most significantly, a tax honesty true believer named Vernice Kuglin, a vivacious and attractive Federal Express pilot who has a crowd of admirers following her everywhere during the conference, was slammed with criminal charges for failure to file and for tax evasion. She beat the rap in August, acquitted of all charges by a federal jury in Memphis.

Also last year, Texas plastics manufacturer Dick Simkanin was finally brought to trial for failure to withhold income taxes for his dozens of employees. Simkanin had been a poster child in We The People–sponsored ads in *USA Today*, featured as a businessman who honestly believes it is his right under law not to withhold. Two grand juries who had gotten to speak to Simkanin failed even to indict him. Finally a third grand jury, whom he didn't get to speak to, did indict. But at the end of his first trial in November, the jurors could not reach a verdict, with 11 out of 12 favoring acquittal.

Both these events occasioned great rejoicing in the tax honesty community. But both had grimmer denouements. Kuglin stayed out of jail, but she was slapped with civil liens for past taxes due and penalties. These days she's only collecting around $290 per pay period from her FedEx job, with the rest snatched by the IRS. Simkanin was promptly retried and found guilty in January, and he now faces a potential 129 years in prison.

How the Simkanin case played out should give the tax honesty movement pause. Judge John McBryde was not entirely fair to his client, says Simkanin's lawyer, Arch



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

McColl, who spoke at the conference. Schulz and other movement heroes testified on Simkanin's behalf in vain. McBryde prevented McColl from mounting a real defense, the attorney complains, sustaining the prosecutors' objections almost every time he tried to raise tax honesty arguments.

The jury sent back a question to the judge asking to see the codes that directly stated Simkanin was required to withhold. (Some of the defendant's ideas clearly had gotten through.) The judge told them simply to trust him when he said the law required Simkanin to withhold—essentially directing the verdict, since Simkanin never denied not withholding. (McColl has strong expectations that this response, among other things, will help guarantee a successful appeal.)

"I pay my taxes and never advise any client not to," says radical lawyer Mark Lane. "But I can tell you, I've read all the cases, and I don't see where it says you have to pay, and I don't understand why the government doesn't answer [these] questions."

Other aspects of how the system treated Simkanin should further discourage tax rebels. Despite being a 59-year-old heretofore-respectable small-business owner not yet convicted of anything, he has been in jail since June. (A federal plant claimed via hearsay, denied in court testimony by someone who was present when the comment was allegedly made, that Simkanin had threatened to kill some judges. The prosecutors sure knew their audience.) During the trial Simkanin was dragged into court in leg irons. The IRS doesn't resort to criminal prosecution very often, so when it does, it wants to make a vivid example.

### It's Magic, You Know: Never Believe It's Not So

The We The People conference brought together many of the movement's leading lights. It also presents some new strategies. Schulz, with the help of superstar radical lawyer Mark Lane, is in the process of launching a class action lawsuit to call the government's cheating hand on this whole income tax matter.

Lane has a mysterious tendency to be wherever the quirky action is in American politics and law. He's famous for being one of the first Warren Commission revisionists with his 1966 book *Rush to Judgment* and for being the lawyer for People's Temple death cultist Jim Jones. He has successfully defended some tax honesty clients, though he tells me: "I pay taxes and never advise any client not to. But I can tell you, I've read all these cases, and I don't see where it says you have to pay, and I don't understand why the government doesn't answer [Schulz's] questions."

The planned suit relies on interestingly fresh grounds: Schulz is claiming that all these government officials who refuse to answer his questions about the income tax are violating his First Amendment right to petition the government for a redress of grievances. Surely, after all, that right must include the ability not merely to send in such petitions but to get some sort of reasonable response.

Schulz recruits plaintiffs at the conference for another planned class action, this one against employers who have refused to stop withholding income tax from their paychecks when employees request it. This is illegal according to Schulz's reading of U.S. Code Title 26, Subtitle C, Chapter 24, Section 3402(n), which does indeed seem to indicate, to quote that section, that "notwithstanding any other provision of this section, an employer shall not be required to deduct and withhold any tax under this chapter upon a payment of wages to an employee if there is in effect with respect to such payments a withholding exemption certificate...furnished to the employer by the employee certifying that the employee—(1) incurred no liability for income tax imposed under subtitle A for his preceding taxable year, and (2) anticipates that he will incur no liability for income tax imposed under subtitle I for his current taxable year."

This is an option on every W4 form. Schulz maintains that the language of the law clearly implies the employer can't get in trouble with the IRS for not withholding as long as the employee thus certifies. As a matter of fact, if not law, the IRS will regularly question such W4s (or ones that claim "too many" exemptions) and lean on employers to start deducting as if a straight one-exemption W4 has been filed. Schulz thinks any employer doing that—and some do so even without the IRS's prodding—should be sued, and he intends to do so in the spring.

To his mind, and those of the 200 gathered at the con-



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ference, they are doing everything an American citizen needs to do when faced with injustice: using every legal, reasonable means to seek a redress. The Constitution will not defend itself, Schulz tells me; it is just a piece of paper. Keeping it healthy requires bold action, often expensive and time-consuming action, from those who love it.

After Lane gives his presentation about the redress of grievances suit, with its announcement that parties to the suit intend to withhold their cooperation with the income tax until the questions are answered, a sour-voiced, heavy-set woman toward the back is appalled. *No one owes the tax*, she exclaims, so what kind of weapon is that to hold over the government's head, withholding something that wasn't even due in the first place?

In his role as general MC for the conference, Schulz is clearly wearied by the obsessions of some of his audience members—for example, the notion that hiring an attorney means abandoning personal sovereignty before the law, or that having a yellow-fringed flag in a room means you are under martial law. But he is generally polite about it, if in a pained way. He tries to explain to the woman that lots of people *are* paying, and that they were seeking to enjoin the IRS from enforcing any tax liabilities on them until the petition is answered.

Sessions at the three-day conference often run late—through lunch and into the evening, past the announced closing time—and the crowds stay through it all. I meet computer industry workers, violin makers, and even ex-IRS agents, from all across the country; they are overwhelmingly white, about two-thirds male, and mostly between 30 and 60 years old. Their comportment and appearance are not kooky by any means. They dress in business casual mostly, evincing no untoward whooping or mania or anger. Gauging audience reaction to certain statements from the podium, I'd say the majority of them are serious Christians. They are serious people in general: rebels without cool, with no sense of humor or irony, armed merely with the conviction that they are right.

Their devotion to their beliefs is certainly religious. Indeed, tax litigation consultant Daniel Pilla, author of *The IRS Problem Solver*, says they're "like programmed cult members—you can't reason with them." More charitably, the tax honesty people are staunch exemplars of America's glorious Protestant heritage.

This observation is not merely a pun on their status as "tax protesters." Their attitude toward the Constitution and the statutes and legal decisions regarding the income tax are uniquely Protestant, relying on a layman's ability—indeed, obligation—to read and study and parse the original documents himself, to come to his own personal relationship with the law and the cases, and to prefer his understanding to that of the priesthood of lawyers, judges, and accountants.

"Case law"—the kind that proves that you can and will be arrested or fined for not filing or paying income tax—means nothing to them; they like to rely strictly on the statutes as written, or on Supreme Court cases and straight constitutional interpretation. Irwin Schiff, the godfather of the movement, is insistent that you shouldn't just take his word for anything: You should check the statutes. He is, he declares, the biggest reseller of the published version of the U.S. tax code. He sells specially tabbed copies leading you straight to the pages in the multithousand-page behemoth you must see to understand his own interpretations.

Not merely Protestant, the tax honesty people are strangely reminiscent of *fandom*—of the comic book, fantasy, science fiction, role-playing-game variety. They have the same obsession with continuity and coherence within a created fantasy world of words. It's just that, in this case, that world of words isn't a multivolume fantasy epic or a long-running TV series—it's U.S. law. When these people try to reconcile the definition of *income* in this subsection of Title 26 of the U.S. Code with the definition in a 1918 Supreme Court case, it's like hearing an argument over the inconsistencies between a supervillain's origin as first presented in a 1965 issue of *The Amazing Spider-Man* and the explanation given in a 1981 edition of *Peter Parker, the Spectacular Spider-Man*.

The tax honesty movement's vision of the world is fantastical in another way. It is not merely obsessed with continuity; it is magical in a traditional sense. It's devoted to the belief that the secret forces of the universe can be bound by verbal formulas if delivered with the proper ritual. There are numerous formulae in the tax honesty spellbook, with rival mages defending them. Which spell is best: The summoning of the Sovereign Citizen? The incantation of the Constitutional Definition of Income? The banishing spell of No Proper Delegation?

The tax honesty folks similarly believe that their foe the IRS must also be bound by these grimoires of magic: that without the properly sanctified OMB number an IRS form holds no power, that without uttering the mystic word *liable* no authority to tax can truly exist.

And always, always, the ultimate incantation, The Question: *Where does it say that I owe income taxes? Show me the law!*



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

### "There Is Hereby Imposed on the Taxable Income of..."

You hear this all the time. When presented with the simple request to "show me the law that unambiguously requires me to pay income tax," I was told, everyone from congressmen to tax lawyers to IRS agents is stymied, even when Schiff and others offer enormous rewards to anyone who can do so. It didn't take me long to find what *seemed* to be an answer to that question.

In U.S. Code Title 26, Subtitle A, Chapter 1, Subchapter A, Part I, Section 1, it says, "There is hereby imposed on the taxable income of...," followed by subcategories that seem to include most Americans, complete with tables showing the percentage owed for each income range. (Subchapter A even comes close to that magic word *liable* that many in the movement insist is nowhere applied to personal income taxes—it's called "Determination of Tax Liability.") But "taxable income" is the rub. Tax honesty types claim the "constitutional" definition of *income*, as set forth in such Supreme Court cases as *Doyle v. Mitchell Brothers* (1918), is *corporate profits*, not individuals' wages. (Courts have knocked down this claim regularly during the last 30 years.)

The movement has an argument against the income tax for every level of abstraction, from the highest (taxing the fruits of our labor is against our natural rights as sovereign individuals) to the lowest (the IRS can't manage to get *everyone*, so it is reasonably safe just not to file). One California paralegal who speaks at the We The People conference relies on everything from the Magna Carta to the Treaty of Paris of 1765 to the U.N. Declaration of Human Rights to defend her contention that she doesn't owe any income tax. Massed together, the chorus of tax honesty voices can't help but remind you of the lawyer in the old joke who argued that his client was not even in town when the victim was killed; and if he was in town, he didn't kill him; and if he did kill him, he was insane when he did it.

At the conference you learn that taxing violates our natural rights; and anyway, the Constitution does not permit an unapportioned direct tax like an income tax; and if you think the 16th Amendment took care of that, well, it wasn't properly ratified; and even if it was, it didn't give any new taxing powers to Congress; and even if it did, the statutes and codes of the IRS as written aren't officially U.S. law; and even if they were, they don't define liability and income such that any normal working American owes taxes; and anyway, if you just don't file they might never catch you. And there are plenty of complications on every step of this tangled path. (The claim that the 16th Amendment wasn't properly ratified actually holds up pretty well. To judge from the pathbreaking research of Bill Benson—a marvelous example of legal Protestantism—there were enough procedural irregularities in its passage that it technically should not have been declared ratified in 1913. Still, it *was* thus certified, and the courts tend to respond to Bensonite arguments by saying it's too late to do anything about it now, and it isn't the court's problem.)

This doesn't mean anything goes in stabbing at the income tax. There are fringe beliefs even on this fringe. Larry Becraft is a lawyer who has actually won a handful of acquittals—including one for Vernice Kuglin—in defending people on trial for tax evasion. He gives a talk that is basically a warning to the movement to get its act straight and stop being absurd. Among the beliefs even others in the movement condemn as silly are the notions that by using a ZIP code or allowing a government document to spell your name in all capital letters, you surrender your sovereignty and make yourself a serf of the federal government, and that the income tax applies only to people who live in a federal territory or district, not to residents of the states.

### "Here I Am, IRS, and I Don't Believe in You!"

Far from that sort of futile reliance on concepts of personal sovereignty that U.S. law just does not recognize, I encounter a remarkably frank and refreshing approach from Peymon Mottahedeh and his Freedom Law School. (Technically, he tells me, the school is a function of a church he runs.) Peymon has a table set up at the We The People conference seeking customers ("students," he prefers to call them) for the "tax defense funds" he sells (both "simple" and "royal" packages).

Peymon and his crew do believe the basic catechism of the movement: that one technically does not have a legal obligation to pay the individual income tax. They also know these arguments never succeed in court. When we meet later at his U.S. Code–lined office, attached to his home on the rural outskirts east of Los Angeles, he tells me he's never seen much value in waving your hands in the air tauntingly and bellowing, "Here I am, IRS, and I don't believe in you!"

Thus Peymon advocates simply *not filing* and relying on the luck of the draw. Peymon claims more than 60 million Americans a year don't file. (There is no official number for this, though some more recent estimates from the government have it that only around 10 million people a year who are supposed to be filing aren't. The IRS admits that in the last three years fewer than 230 nonfilers a year have been convicted.)



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The next step is to ignore the threatening letters and audit requests you receive until you get an official Notice of Deficiency from the IRS. Then you go to Tax Court and stonewall like crazy, making the IRS prove you owe them something without the aid of the "tax confession form," as Peymon calls the 1040. (This all works better for you if you are self-employed and the IRS hasn't already gotten its hands on your money through withholding.)

Peymon is a natural-born salesman, a handsome Iranian man with thick black hair swept back. He says he doesn't really fear retaliation from the IRS since, after escaping from the Shah's Iran, he feels he's living a second life now anyway. "If we lose our freedom here, where else are we going to go?" he asks. Since he's been selling this advice for only a couple of years, and tax court proceedings often stretch out that long, he says he doesn't have solid stats on how well this approach is doing, and he shies from announcing his number of customers—wouldn't the IRS love to know? But he thinks his approach is the smartest one the movement has come up with. The IRS is a big bully; the smartest thing to do is stay out of the bully's way and not call attention to yourself.

It's too late for that for the movement's biggest star, Irwin Schiff. At the We The People conference I witness a young fellow enthusiastically shake the hand of this compact 75-year-old man with a broad and squeaky voice and call him his hero; Schiff takes it in stride. He is the man, the granddaddy, in many ways the Founding Father of the modern tax honesty movement. Some of his signature ideas were floated by earlier figures, including Pete Soehnlen and Robert Golden, but he became the first mass phenomenon of tax honesty with his 1982 book *How Anyone Can Stop Paying Income Taxes*, originally self-published and later distributed by Simon & Schuster. He says he's sold nearly half a million copies of his various books. Schiff used to sell tax shelters, and he first came to prominence in anti-statist circles with a 1976 Arlington House hit called *The Biggest Con*—which, despite the title, is a standard right-wing peroration against taxing, spending, and Social Security and does not take a radical anti–income tax stance.

Even though he tells us anyone can stop paying income taxes, Schiff has spent a few years in prison as a result of criminal prosecutions on various charges stemming from his own failure to pay taxes. He has been out of jail since the early '90s and has avoided "failure to file" convictions since then by filing an innovation he popularized, the "zero return." That means you file a 1040 but claim to have had no taxable income—which by Schiff's reading of the tax code and various Supreme Court cases, he does not (and neither do you).

Even though he tells us anyone can stop paying income taxes, movement superstar Irwin Schiff has spent a few years in prison as a result of prosecutions stemming from his own failure to pay taxes.

His latest book-length disquisition on these matters, *The Federal Mafia*, is a work of baroque complexity. Yet when Schiff hears I'm a reporter writing about the movement, he says the truth about taxes is easy to grasp. "It's so simple, it's ridiculous," he tells me.

Sometimes Schiff's arguments are not really about the law, just an appeal to a basic sense of fairness. For example, how can a country with a Fifth Amendment require us to file and sign 1040s under penalty of perjury when the information on them can be used against us in civil and criminal prosecutions?

Mostly, though, his shtick is based on various sorts of word magic. While some sections of the excise tax code specifically list the circumstances under which one becomes *liable* for them, for example, there appears to be no such section for the income tax. Therefore, Schiff argues, no one is actually *liable* for it—even though, as detailed above, the tax is "imposed." Similarly, he posits a terribly significant distinction between a "notice of levy" and a "levy."

I get hit with a hilarious application of Schiff's verbal judo as he attempts to convince me and another apparently confused attendee that "compensation for services" could not mean the same thing as "wages" for tax liability purposes. (This all fits in with his argument that only corporate profits should be considered "income.") He shows us a place in the code that seems to define "compensation for services" as taxable while not mentioning "wages." The other guy objects that surely a wage falls into the category of a "compensation for services."

"It's not the same!" barks Schiff, the Socrates of the tax code. "And I'll prove it to you: Can a corporation receive compensation for services?"



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

His interlocutor admits that yes, wise Schiff, it cannot be denied this is indeed so.

"Can a corporation receive wages?"

The guy pauses a moment, then grants that this proposition seems doubtful.

"See!" Schiff is pleased. "They're not the same!"

It all seems so sensible with the energetic Schiff yapping at you. Of course, to say that something falls *into* a category is *not* the same as saying it is identical to the category. Schiff's argument is ultimately as convincing as saying that if an apple is a fruit, and an apple is not an orange, then an orange can't be a fruit. Still, he seems happy with it.

The tax honesty folks push a naive Americanism, but an Americanism nonetheless. They are no more insane, in principle, than anyone else anywhere who has ever tried to fight city hall.

How, one might ask (and many have), can Schiff continue to maintain there is no legal obligation to pay income taxes when he has spent time in jail for not paying income taxes? He addresses this question in the latest edition of *The Federal Mafia*: "Unfortunately, some people who were persuaded by [my books] that they could legally stop paying income tax (they could) went to jail. How many, I don't know. But they and their families paid a terrible price because of what they learned....I must again warn you regarding the use of this information. There is no question that it is all correct. Paying and filing income taxes are, by law, voluntary. The law...also provides you with a means for stopping the withholding of that tax, which, by any legitimate standard, you have a perfect right to do. But, by doing so, you run the risk of going to jail!"

### "Liable, Liable, What Makes Me Liable?"

The reason for that seeming paradox, Schiff says, is simple: The IRS and the judges it brings cases before are corrupt and don't care what the law says. Which is why, since February 2003, Schiff has had his Las Vegas office raided and records of all his clients seized and the IRS has moved for judgment on $2.5 million in back taxes and penalties it claims he owes. In what his own camp has called a ruse, he's declared himself "delusional" to avoid the back-taxes charge. A federal judge also has banned the sale and distribution of *The Federal Mafia* by Schiff and forbade him from publicly saying what he believes about the income tax. (That ban is under appeal now.)

Schiff tells a group of well-wishers this latest wave of statist oppression swamped him momentarily—he went into a depression and lost 20 pounds—but "I'm back! I'm back! I'm going to kick their ass!"

He proudly points out that all the back taxes in the $2.5 million judgment are from many years ago and that the IRS has done *nothing* to him for his more recent zero return filings. This proves to him *that* strategy *must* be foolproof.

Vernice Kuglin's acquittal on criminal charges has made her one of the movement's new saints and heroes. I witness her taking aside a man troubled by the mess he's in because he advocated these beliefs as an accountant; she tells him kindly but firmly, "We know in our core that's what we have to do." She was involved in Libertarian Party activities in the early '90s and through that was exposed to tax honesty ideas. By 1995 she was sending letters to the IRS asking what specific section of U.S. code or statutes made her liable for the federal income tax. Were she legally liable, she insisted, she would be more than happy to pay.

Despite the liens on her income, Kuglin is optimistic. A juror in her case, she tells me, had a dream during deliberations in which he heard Kuglin repeating, "Liable, liable, what makes me liable?" This was apparently the crack in his mind that convinced him to lead the jury to acquittal. And then her son had a dream in which she and her lawyer were standing in front of the courthouse, and a ball of light spread around them and enveloped the world. She believes it is all fate, that the universe is taking care of her, that her victory is the beginning of the end of the whole evil lie of the income tax, and that "every setback is one more step to the win" in this battle.

A sober assessment of the empirical evidence shows that the exact opposite is true—that victories for the tax honesty movement (the occasional criminal acquittal or mistrial) lead inevitably to a later defeat (further convictions or civil seizures). But that realization doesn't rely on contemplating the Constitution, statutes, codes, or rabbinical parsings of word definitions. Thus, it is not quick to occur to the devotees of tax honesty.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

They move, with heavenly grace, through an existential hell: In their minds and hearts they are absolutely certain that they are right, and even doing God's work. (The contention that the Constitution was divinely inspired elicits a fair amount of clapping and no open unrest at the We The People conference.) But they are also fully aware that all the powers and dominions of the earth are arrayed against them and regularly torment them.

They believe, in the face of all evidence to the contrary, that their citizen's understanding of the written law should, and in some Platonic sense does, trump the realities of dealing with the government. This makes them uniquely American rebels—more true, they maintain, to the nation's core values than those of us who follow the pragmatic advice an accountant once gave to one man at the conference. When the tax honesty devotee showed him a Schiff-marked copy of the tax code, the accountant replied: "You mess with that shit, you are going to jail."

Well, not *necessarily* to jail. Tax honesty folks adore the Supreme Court's 1991 decision *Cheek v. U.S.*, which authoritatively ruled that a belief, however objectively unreasonable, that one was not liable to pay income tax could negate the element of willfulness necessary to establish criminal culpability for income tax crimes. In this area, in essence, ignorance of the law *is* an excuse. But as Daniel Pilla puts it, *Cheek* "might keep you out of jail, but it won't mean you don't owe the tax."

Still, the tax honesty folks believe, to their core, that a written Constitution and written laws truly can restrain the unbridled force of government. They push a naive Americanism, but an Americanism nonetheless. They are no more insane, in principle, then anyone else anywhere who has ever tried to fight city hall, sue the government, or halt congressional action by relying on, say, the Commerce Clause.

Their facts are mostly wrong. But whether wrong or not, they are irrelevant—and the tax honesty folks know it. Not a one seems unaware that jail and property confiscation are a likely result of acting on their ardently held conclusions. But they refuse to *believe* it. This makes them foolish, to be sure. But it doesn't necessarily mean they aren't heroic. As one conference attendee tells me, "I don't care how many cowards there are. There's one less on the planet, and that's me. Everyone has to stand up for something in their lifetime." ▮

*Senior Editor Brian Doherty (bdoherty@reason.com) is the author of This Is Burning Man, to be published this summer by Little, Brown.*

## Five Reasons You Don't Owe Income Tax, Damnit!

The most heartfelt beliefs of the "tax honesty" movement

*Brian Doherty*

Here are some of the core arguments against the legality of the income tax one finds in the tax honesty movement. Devotees probably would regard them as oversimplifications. This is certainly not an all-inclusive list.

1) The IRS declares in various documents that the income tax is "voluntary." And in *Flora v. U.S.* (1960), the Supreme Court announced, "Our system of taxation is based upon voluntary assessment and payment."

2) In *Brushaber v. Union Pacific* (1916), the Supreme Court declared that "the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation" is "erroneous," and thus the 16th Amendment did not give Congress any taxing powers it did not already have. Hence, an unapportioned direct tax such as the income tax still cannot be legal. (Most mainstream readings of this extremely hard-to-follow decision say the Court meant Congress always had the power to levy an income tax, and that it was merely the question whether it should have to be apportioned that was at issue.)

3) Income, for the purposes of the tax code, should not be understood in any "common sense" way but only as defined by the Supreme Court. The Supreme Court, in *Merchant's Loan and Trust Company v. Smietanka* (1921), defined it as having the same meaning as in the Corporation Excise Tax of 1909—and as Irwin Schiff has written, "nothing that was received by private persons was taxable as 'income' under that Act." Income is defined as "gain derived...from labor" in a previous Supreme Court decision, *Stratton's Independence v. Howbert* (1913).

4) Title 26 of the U.S. Code, in which tax-related statutes are found, is inherently "void for vagueness" because it lacks precise definitions of such terms as *state*, *United States*, *employee*, and *person*. Again, "common sense" definitions aren't good enough. (Many tax honesty types interpret the use of the word *includes* in the tax code as properly meaning, "is limited to.")

5) According to the tax-honesty reading of U.S. Code 26, Section 861, only income from foreigners or from overseas activity appears to actually be subject to the income tax. ▮



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# Temporary Doves

## Why are the architects of Kosovo so down on Gulf War II?

*Matt Welch*

*Madam Secretary: A Memoir, by Madeleine Albright with Bill Woodward, New York: Miramax Books, 562 pages*

*The Bubble of American Supremacy: Correcting the Misuse of American Power, by George Soros, New York: Public Affairs, 207 pages*

*Winning Modern Wars: Iraq, Terrorism, and the American Empire, by Wesley K. Clark, New York: Public Affairs, 218 pages*

Of all the historical precedents that paved the way for President George W. Bush's war against Iraq, the most directly relevant was Bill Clinton's 1999 bombing of the rump Yugoslavia.

Like Gulf War II, the 78-day NATO air campaign in Kosovo was waged without the explicit authorization of the United Nations. (Of the two, the Iraq war had much more of a U.N. mandate, through Resolution 1441, which gave Iraq a "final opportunity"—one it did not take—to comply fully with all previous Security Council resolutions or else face "serious consequences.") Like Iraq, Yugoslavia was a sovereign country that was bombed into submission for essentially internal infractions. Both wars were expressions of American exasperation at European impotence in the face of dictatorial slaughter. Slobodan Milosevic, like Saddam Hussein, was described as a modern-day Adolf Hitler, eager to practice genocide against minority tribes while scrambling for horrible weapons to menace peaceful neighbors. Supporters of both wars frequently invoked the Munich Agreement of 1938, in which the West appeased Hitler rather than defend allied Czechoslovakia. Opponents of both wars warned that the target countries were colonially conceived multiethnic basket cases not conducive to postwar democratization. And the United States led the fight against both dictators despite urgent warnings from antiwar activists and multilateralism enthusiasts that each new bomb would lower the threshold for waging modern war. Kosovo made Iraq possible.

So it is of pressing interest to see what the architects of Kosovo, and its predecessor campaign in Bosnia, have to say about Bush's controversial war. As luck would have it, there are recent books from three key Yugoslavia warriors: Madeleine Albright, the Munich-haunted Czechoslovak émigré who was the most influential anti-Milosevic hawk in Clinton's cabinet; George Soros, the Munich-haunted Hungarian émigré and billionaire philanthropist who was among the earliest and most influential nongovernmental voices to urge military action against Serb nationalists; and Wesley Clark, the retired supreme allied commander of NATO who directed the Kosovo War. Since Clark was one of the top four Democratic candidates for president, and Soros has redirected his considerable energy and at least $15 million to effect "regime change" in the United States, their distinction between Kosovo and Iraq arguably looms as the defining foreign policy difference between Democrats and Republicans in 2004. And for those of us who supported Clinton's Wilsonianism but not Bush's, these books should help answer two questions we really ought to be asking ourselves: Is our support for America's activist role dependent on high moral principle, or is it tethered to partisan politics? And did we lower the bar for military intervention?

Albright's *Madam Secretary*, a surprisingly intimate and detail-rich memoir, does the best job of laying out the philosophical groundwork for why Clinton suddenly reversed three years of muddling policy by getting violent with Milosevic in 1995. After four years of watching horrendous, evocative images of civilian slaughter and concentration camps on the European continent, Clinton was, she says, finally persuaded by the insistent voices around him whose lives had been directly mangled by Munich.

Numbered graves containing the remains of Kosovo Albanians previously buried in a mass grave. © Thorne Anderson/Corbis Sygma



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"When I was still a little girl," Albright writes in the preface, "my family was driven from its home twice, first by Fascists, then by Communists. While in office I was able to fight against ethnic cleansing in Yugoslavia, a country where I had lived as a child."

That kind of jarring juxtaposition of the personal and political runs throughout the book, making the story of Albright's U.S. government service look like a Czech wish fulfillment fantasy. It also illustrates how the administration's tilt toward

Most recent American presidents, regardless of party, have campaigned on domestic issues and a more "humble" foreign policy, then governed much like the global cop they replaced.

Central Europe—the White House was influenced also by Polish-born Joint Chiefs of Staff Chairman John Shalikashvili and by the president's close relationship with Vaclav Havel—focused attention on that part of the world, rather than on more genocidal hot spots such as Rwanda.

"In one of his books," Albright writes, her diplomat father Josef Korbel "quoted the Czechoslovak patriarch, Tomas Masaryk: 'Love of one's neighbor, of the nation, and of humanity imposes upon everyone the obligation to defend oneself and to resist evil constantly, at all times, and in all things.' For me that obligation was triggered by the campaigns of brutality launched by Serb President Slobodan Milosevic."

Albright, who was U.N. ambassador in Clinton's first term and secretary of state in the second, has spent a lifetime focused on the former East Bloc. She wrote her undergraduate honors thesis on Czechoslovakia's postwar period, enrolled in graduate Soviet studies under Polish émigré Zbigniew Brzezinski, wrote her dissertation on the Prague Spring, won a Woodrow Wilson fellowship to document the Solidarity uprising in Poland, and was hired for her first government job by son-of-Polish-immigrants Ed Muskie. She describes her relationship with Havel as "one of the most precious friendships of my life" (the two have vacationed together in Bermuda) and confesses "mixed feelings" at turning down his suggestion to succeed him as Czech president. Famously, she discovered soon after being sworn in as secretary of state that she was Jewish, and that three of her Czech grandparents had been killed in concentration camps. As she was fond of telling State Department reporters, "Munich is my mindset."

Problem is, Munich has been the mind-set of just about every other administration in recent history, from Bush II back to Harry Truman, regardless of analogical accuracy. The ghost of Neville Chamberlain has been exhumed to justify American interventions in Korea, Iraq (twice), a ragbag of Third World hellholes, and Vietnam. Albright's contemporaneous reaction to the Vietnam War neatly illustrates the limitations of letting Munich do the thinking for you: "For a long time it didn't occur to me to question [it]," she says.

Evil is never in short supply, regrettably, and choosing which Hitler to confront is a complicated business, especially when you have the most powerful military in the history of the planet and the rest of the world obsesses about your strength. Albright's approach to this dilemma was embodied in her famous comment to then-Joint Chiefs Chairman Colin Powell in 1995: "What are you saving this superb military for, Colin, if we can't use it?" She consistently lobbied for the use of force—threatening invasion of Haiti, bombing Milosevic to the negotiating table, levying and tightening sanctions all around the globe. When military adventures went awry, as in Somalia, the "firepower was insufficient." The failure to intervene in Rwanda? "My deepest regret." Did Albright worry much that an ever-more-activist America might encourage unhealthy dependency, sow global resentment, and create unholy temptation in the White House? Something close to the opposite: "For all the power of the United States," she laments at one point, "we were not able to dictate events."

A person so committed to combating dictators with American might—without U.N. approval, if need be—could be expected to support the ouster of Saddam Hussein, and so she does, albeit with caveats. In a book that takes pains to avoid

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

criticizing any current or former secretaries of state, Albright admits to "many doubts about the Bush administration's diplomatic timing, tactics, rationales, and postwar plans in the months before and after the 2003 war."

So the great Albright/neocon split comes down to Bush's style more than his substance. This is largely the message communicated by George Soros, the wealthy hedge fund operator and philanthropist, who has in recent years become a surprisingly harsh critic of the same global capitalism and American-led democratization he had long championed (and profited from). "One of the reasons I was so opposed to the invasion of Iraq," Soros writes in his brisk little polemic, *The Bubble of American Supremacy*, "was that the action was liable to give nation building a bad name."

Soros is arguably the world's greatest private-sector nation builder. His charities, centered mostly in the former communist world, have disbursed nearly $5 billion during the last two decades, on initiatives ranging from keeping 35,000 top Russian scientists financially solvent during the 1990s, to founding a Central European University in Budapest, to providing fresh drinking water to besieged Sarajevo. His cosmopolitan organizations are openly opposed to most things authoritarian, including several of their host governments. "My foundations contributed to democratic regime change in Slovakia in 1998, Croatia in 1999, and Yugoslavia in 2000, mobilizing civil society to get rid of Vladimir Meciar, Franko Tudjman, and Slobodan Milosevic, respectively," he brags. Just before the book's publication, he could have

*Madam Secretary* (cover detail)


# Looking for libertarians

**with business/management expertise, such as fundraising, public relations, marketing, graphics, finance/accounting, research, policy analysis, and other areas. Opportunities at all levels.**

**Send letter and resume to careers@cato.org.**

**www.cato.org**



## United States Institute of Peace Grant Program • Fall 2004 Competitions

The United States Institute of Peace is accepting applications for its Fall **Unsolicited** and **Solicited** Grant competitions. The Grant Program offers financial support for research, education, training, and the dissemination of information in the fields of international peace and conflict resolution. • The Unsolicited Grant competition is open to any project that falls within the Institute's general mandate of international conflict resolution. • The Solicited Grant competition is only open to projects that fall within the themes and topics identified in advance by the Institute. The topics for the Fall 2004 competition are:

- Solicitation A: *The Economics of War and Peace*
- Solicitation B: *Southeast Asia*

The Institute encourages applications from nonprofit organizations and official public institutions. Individuals may also apply. For further information and application materials, please call, write, or e-mail:

**Grant Program • United States Institute of Peace**
1200 17th Street NW, Suite 200
Washington, DC 20036-3011
(202) 429-3842 • Fax (202) 429-6063 • TTY (202) 457-1719
• e-mail: grants@usip.org

Application materials may also be downloaded from our website: www.usip.org/grants

The closing date for *receipt* of Fall 2004 Unsolicited and Solicited grant applications is October 1, 2004. Award announcements will be made by March 31, 2005.




LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

added Georgia and Eduard Shevardnadze to that list.

So what's wrong with regime change in Iraq, whose dictator made the democratically elected (and defeated) Vladimir Meciar look like Thomas Jefferson? Soros' explanation is almost laughably tortured: "When the weapons of mass destruction could not be found, President Bush fell back on the justification of liberating Iraq from a heinous dictator and introducing democracy. That is indeed a noble cause, which could have justified the invasion if the president had made a case for it. But that was not the case that President Bush had presented to Congress, and presumably, Congress would not have endorsed it."

Later, "noble cause" notwithstanding, Soros compares Iraq unfavorably to Vietnam, rues that "it could have been avoided," and then announces that "admittedly, Saddam was a heinous tyrant and it was a good thing to get rid of him"—and that's just on a single page. A page later, he laments that the United States, because of overextension in Iraq, "has been reluctant to get engaged in Liberia, causing unnecessary suffering." To be only slightly unfair, Soros seems to oppose toppling tyrants only when it is Bush's White House doing the dirty work.

Why? Because the president has embraced the doctrine of military pre-emption, allowed some members of the neoconservative Project for the New American Century to have positions of influence on foreign policy, and noisily mocked multilateralism in favor of case-by-case bilateral arrangements, thereby making the rest of the world, including longtime allies, nervous and surly.

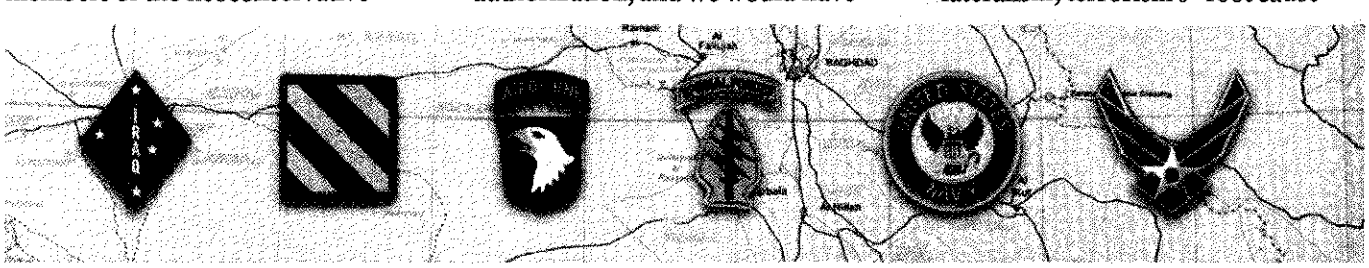
The criticism is valid enough, and Albright shares it, though to a less vitriolic degree. (Soros decries "Bush's rabid unilateralism," while Albright worries diplomatically that "the great institutions forged by the trans-Atlantic partnership that saved freedom in the twentieth century are in jeopardy" and "must be rescued and revitalized if that blessing is to survive the twenty-first.")

But both fail to acknowledge that the democratizing idealism of Bush administration officials such as Deputy Secretary of Defense Paul Wolfowitz is in fact suspiciously similar to their own nosy Wilsonianism. They do not ponder whether aggressive Democratic interventionism made Bush's Republican (and therefore less palatable) version more possible. To the contrary: Soros even writes an entire chapter on how to overcome that annoying obstacle of "sovereignty" when meddling in the affairs of tyrants. He and Albright both skate over the fact that, in Kosovo especially, their pro-war and anti-U.N. arguments could be cut and pasted into Dick Cheney's talking points on Iraq.

"I believe we were justified in intervening in Kosovo without U.N. authorization, and we would have done better if we had relied on NATO and not the United Nations in Bosnia," Soros writes. "But unilateral action that goes against international public opinion cannot be justified, and it can endanger our national security by turning the world against us." Unfortunately, Soros does not explain how we might quantify this "international public opinion," or come up with a Plan B when the world is acting particularly daft. If European public opinion had won the day in March 1999, Soros' Kosovo war never would have been fought.

The most coherent argument against Bush's Iraq policy comes from a perhaps surprising source, given his much-publicized campaign flip-flops on the issue: Wesley Clark. *Winning Modern Wars*, though a clumsily written and awkwardly structured book (one part crisp military description of the Kosovo war, one part foreign policy argument, then an unconvincing tacked-on chapter about domestic policy issues), nonetheless drives home and supports a few simple, pragmatic points. "The Bush administration's focus on Iraq had thus far weakened our counterterrorist efforts, diverting attention, resources, and leadership, alienating allied supporters, and serving as a rallying point for anyone wishing harm to the United States and Americans," Clark writes.

Bilateralism costs much more in time, money, and lives than multilateralism; terrorism's "root cause"



*Winning Modern Wars* (cover detail)



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

(which Clark laudably defines as "the extreme Wahhabist ideology and funding from Saudi Arabia") has been unaddressed; intelligence has been recklessly warped for political purposes; the military is stretched perilously thin. "U.S. foreign policy had become dangerously dependent on its military," Clark writes. (Much of the book is written in this annoying past tense.) "The armed forces were practically the only effective play in the U.S. repertoire."

Clark looks back fondly on the "new strain of idealism in U.S. foreign policy" during the Clinton era, when the interventions and peacekeeping operations were aligned, he contends, with the noblest of American values. "But 2001 marked a profound departure," he warns. "The Bush administration acted unambiguously to put a more unilateralist, balance-of-power stamp on U.S. foreign policy."

Like Soros, Clark is alarmed, not heartened, that a Wolfowitz-flavored Wilsonianism was grafted onto the Kissinger-style balance-of-power approach after September 11. "Overnight, U.S. foreign policy became not only unilateralist but moralistic, intensely patriotic, and assertive...intimating the New American Empire."

Somewhere within these ominous warnings, a small but tangible Democratic foreign policy distinction begins to emerge. Munich is the mind-set, but not if it prevents us from confronting still more little Hitlers. It's not the invasion, it's the motivation. Selective use of unilateralism and even pre-emptive military action is OK; just don't be rude about it.

This characterization may sound flippant, but the divisions are real. There is genuine concern over in the Democratic aisle that America's plummeting reputation abroad is a source of danger in and of itself, and will continue to drive military costs skyward while perhaps encouraging more terrorism, not less. Bush's irritable, realpolitik, man-to-man bilateralism, in which Saudi princes he's known for years get treated with more respect than the less intimate but nonetheless elected leaders of Europe, is the kind of hubris that suggests impending collapse—in Soros' theory, a burst "bubble" of American prominence. As Clark darkly muses, "Somewhere in the rising U.S. budget deficits, the balance-of-payments current accounts deficits, and the growing resentment of the United States abroad, there may be a 'tipping point.'"

Unless the more sober Democrats come to the rescue, of course. But what, really, would they do differently? Most recent American presidents, regardless of party, have campaigned on domestic issues and a more "humble" foreign policy, then governed much like the global cop they replaced. The loyal opposition (Republicans in the late '90s, Democrats now) has to be dragged into supporting a war or major troop deployment, while the commander-in-chief can be counted on to invoke Munich and warn against isolationism. The difference? One party talks up the virtues of multilateralism, while the other talks it down.

That distinction may be enough to earn my vote in November, but as tangible philosophical differences go it ranks somewhere not far above splitting a hair. If the most vexing foreign policy issue we face is that American supremacy is indeed a bubble inflated by military assertiveness—and that's the big *if*—then playing nice with international institutions is about as structurally significant as applying a new shade of lipstick on a very old pig. ▪

*Contributing Editor Matt Welch (mwelch@reason.com) writes about media and politics for Canada's National Post.*

*Ghost in the Shell* courtesy Manga Entertainment Inc.

## The strange but familiar world of a Japanese TV cartoon

A woman with purple hair stands on the edge of a skyscraper's roof, watching the green-lit cityscape beneath her. She jumps—not quite flying, not quite falling—while coolly preparing her equipment for a political assassination.

Sound familiar? It's the opening scene of the animated Japanese film *Ghost in the Shell* (1995), but you don't have to know the movie to recognize it. It's been recycled everywhere from music videos to *The Matrix*.

*Ghost in the Shell* was based on Masamune Shirow's comic book by the same name. The film, in turn, has spawned the TV series *Ghost in the Shell: Stand Alone Complex*, which debuted in Japan in 2003 and may soon be available to Americans on the Cartoon Network. Between its dystopian politics and its postmodern take on identity, the cartoon engages issues far more interesting than those you'll find on most live-action shows.

A futuristic police procedural, *Stand Alone Complex* centers around Section 9, a »



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# Not the Same Old Hickory

## The contested legacy of Andrew Jackson

*Amy H. Sturgis*

*The Passions of Andrew Jackson, by Andrew Burstein, New York: Vintage, 320 pages*

THE RYMAN AUDITORIUM—Nashville's original Grand Old Opry—has become a concert stop for a variety of touring musicians, among them the singer-songwriter Tori Amos. The granddaughter of a Cherokee, Amos has added verses to the traditional tune "Home on the Range" for her own "Home on the Range: Cherokee Edition," a version that recalls a bleak chapter in Native American history: "Well Jackson made deals, a thief down to his heels/Hello, Trail of Tears."

When she sings those lyrics in Nashville, she's not far from National Park Service markers that note where the Trail of Tears National Historic Trail land route winds past the city. Equally close, and equally a part of Nashville, sits the Hermitage, the historic home of the very president who made the Trail of Tears a reality: Andrew Jackson.

A tour of the Hermitage today includes the thrilling rags-to-riches story of a gallant frontiersman, chivalrous romantic, and political reformer. The almost painfully pleasant members of the Ladies' Hermitage Association, which operates the property, all seem to suffer from selective memory where the object of their affections is involved. Of course, these ladies are not really responsible for the rose-colored glasses through which they view the seventh president. Historians of recent decades also have fallen under Old Hickory's charismatic spell. Andrew Burstein's *The Passions of Andrew Jackson* seeks to reverse this trend and balance our understanding of Jackson, the man and the leader. Burstein, a professor of history at the University of Tulsa, sheds new and harsh light on the Sage of the Hermitage and what he represents to Nashville and the country at large.

Burstein's work challenges a shelf of canonical texts that currently influence scholarly and popular opinion. These works present Jackson as the symbol of the common man thanks to his dual positions as a self-made son of the frontier and military hero; the enemy of the elite thanks to his attack on the Second Bank of the United States; and the champion of the Union thanks to his definitive response to state nullification of federal law. Jackson's individual style, from his avid personal campaigning to his presidential use of an advisory "kitchen cabinet," is now considered the trademark of a larger-than-life figure who embodied the will of the nation. This mainstream view of Jackson admiringly moves the man from history into legend.

Consider the most famous example. Arthur M. Schlesinger Jr.'s *The Age of Jackson* (1945), its Pulitzer Prize notwithstanding, spoke much more to Schlesinger's own era, his adoration of New Deal policies and zeal for populist democracy, than to Jackson's political means or ends. Schlesinger in effect read history backward to cast Jackson as a reformer in the mold of Franklin Roosevelt; the result amounted to a lively and articulate love fest that had little to do with Jackson himself.

Nevertheless, Schlesinger's warm fuzzies attached themselves firmly to Jackson's mystique. William Ward's *Andrew Jackson: Symbol for an Age* (1955) and Marvin Meyers' *The Jacksonian Persuasion* (1957), both able books, considered Jackson more as a symbol than as a human being, and therefore did not challenge Schlesinger significantly.

The reigning biography on Jackson remains Robert V. Remini's trilogy —*Andrew Jackson and the Course of American Empire, 1767–1821*; *Andrew Jackson and the Course of American Freedom, 1822–1832*; and *Andrew Jackson and the Course of American Democracy, 1833–1845*—published between 1977 and 1984. Remini did not revise Schlesinger as much as add detailed personal flourishes to Schlesinger's broad political strokes to complete an admiring portrait of Jackson the hero.

Schlesinger himself praised the way in which Remini moved "boldly beyond the scholar's monograph" in his work, which is to say that Remini regularly embellished, imagined, and championed Jackson's point of view and behavior. Mainstream presidential and political historians have tended to marginalize contemporaneous, often critical accounts of Jackson, thus omitting an entire dimension of controversy over his policies and practices.

Burstein, in contrast, gets personal. By examining Old Hickory's private relationships and intimate correspondence, he tries to make Jackson "more knowable." In so doing Burstein tells a story of how Jackson used his power against those he disdained (the physically weak or culturally different, the "dishonorable," Native Americans, blacks, and others), and how his bullying violence and uncontrolled temper eventually transformed U.S.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

policy in what became an "avenging" presidency. This Jackson made the personal political, using politics to right perceived personal wrongs, governing by inciting and unleashing fears in others. "He did not accept the rule of law," Burstein argues, "unless he made it."

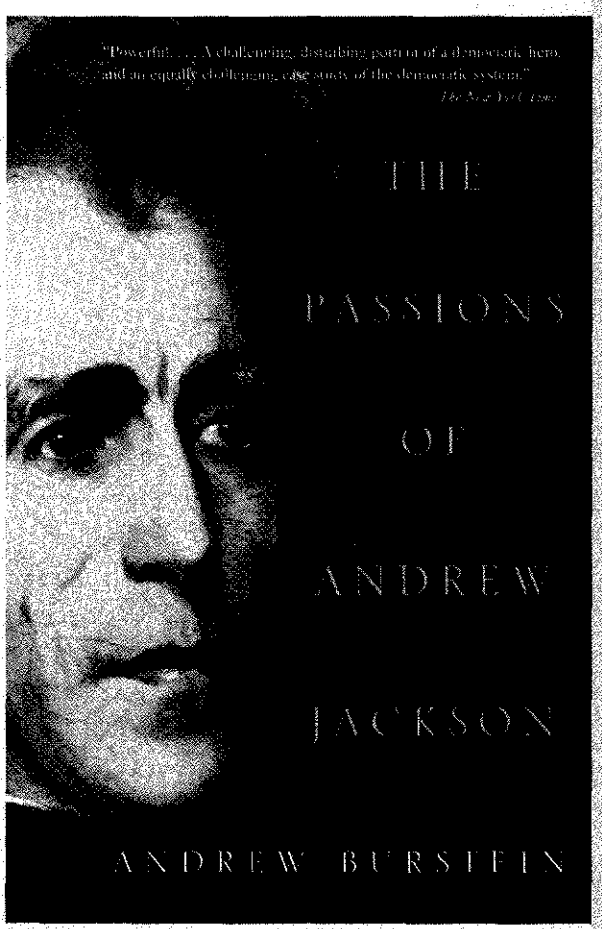
Particularly telling is Burstein's insight that it was not enough for Jackson to win; his opponents had to fail. In 1819, for example, a supporter of Jackson's opponent William Crawford—a political hopeful named Andrew Erwin—published a protest against allegedly illegal land speculation conducted by Jackson and his friend Sen. John Henry Eaton. Jackson helped to engineer a duel to settle the issue and fantasized about "pistols suspended—until after the word fire—and I will soon put an end to this troublesome scoundrel....I pledge myself on the foregoing terms, if my pistol fires—I kill him."

When diplomacy forestalled the duel, Jackson could not let the disagreement die a natural death. He pursued Erwin, finally going all the way to President James Monroe in order to crush his detractor's hopes of a political career. This need to end every "battle" decisively carried over into the policies he pursued, be they the removal of American Indians or the death of the Bank of the United States, regardless of the dictates of the Constitution.

Burstein does not stand altogether alone among scholars in his critical view of Jackson. In *Old Hickory's War: Andrew Jackson and the Quest for Empire* (1996), David and Jeanne Heidler examined the little-explored territory of Jackson's leadership in the Creek and First Seminole wars. Using solid sources from various state archives and private letter collections, the authors created a compulsively readable account of Jackson from 1813 through 1819, the period of his military victory over the Creeks and Seminoles and his seizure of Spanish Florida.

The story reveals how personal were Jackson's politics in a variety of explosive and often deadly ways: acting on his hatred of Native Americans as well as the English and Spanish, glorifying the trappings and rituals of military might, adhering to a two-dimensional and unsophisticated patriotism, and disregarding the letter of the law and those who sought to enforce it. The Heidlers argue that "mature deliberation and rational thought were always brittle facets of this man's turbulent personality....Jackson was an angry young man who became an angry old man."

The Heidlers provide numerous examples of how, through his impulsive and often illegal behavior, Jackson moved Manifest Desti-




*The Passions of Andrew Jackson* (cover)

secretive intelligence agency dealing with high-tech crime. The main character is Major Kusanagi, an elite ex-soldier whose body has been entirely replaced by robotics. Only her brain is natural, and sometimes she wonders about that too.

The criminal stories are often simple, but that's almost beside the point. The real question isn't who the culprit is but why the culprit did it. The series depicts intricate infighting within the government, with the intelligence agencies jockeying with the police and the military while the Department of Health uses other departments as tools for its own schemes.

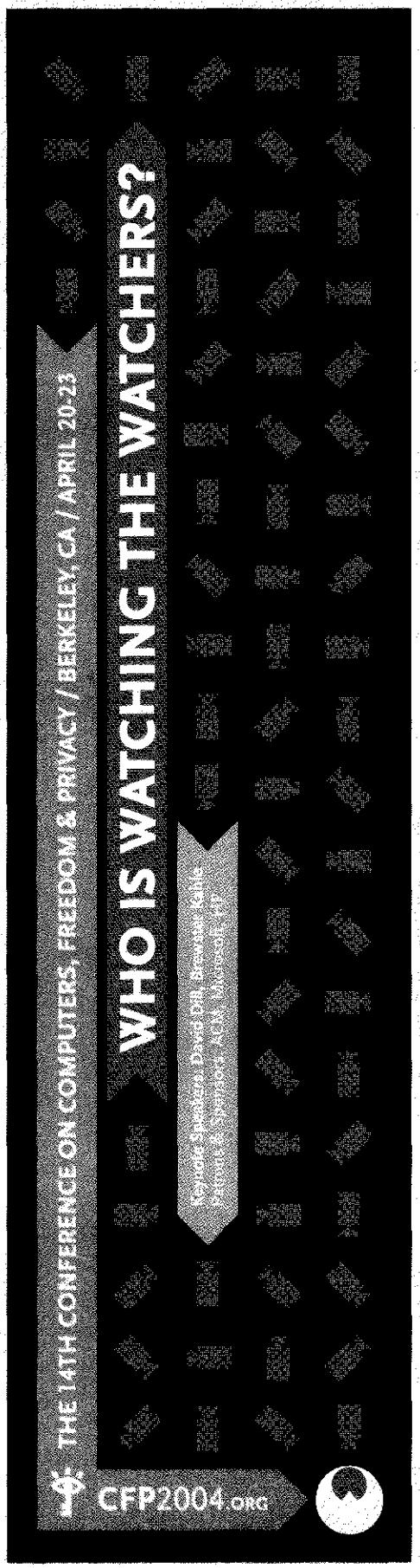
In the cyberpunk novels and films of the 1980s, the future was usually run by megacorporations that had taken over all the functions of government. *Ghost in the Shell* takes a slightly different road. Rather than vanishing, the government becomes symbiotic with the corporations: a corporate state.

Such corporatism, of course, is hardly alien to Japan—or to Europe and America, for that matter. The show merely pushes the idea further. Corruption in a company spills over to the government and vice versa; trade secrecy and national security combine to eliminate transparency. Unlike many science fiction dystopias, this one seems uncomfortably realistic.

The show's other projections may feel more surreal. One of Shirow's favorite themes is advanced technology's effect »



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED




ny ideas into imperialist action. For example, during the First Seminole War of 1818, Jackson captured two British citizens in Spanish Florida, Robert Ambrister and Alexander Arbuthnot. The former was an ex-Marine turned mercenary who was apparently working with area blacks and American Indians to undermine the Spanish. The latter was a private businessman and trader who, from a combination of humane concern and his own economic self-interest, sought peace between the Seminoles and the United States. Because they were English, because they collaborated with Native Americans, and because they interrupted his burning and looting of native villages, Jackson demanded satisfaction.

He engineered a jury of 12 of his most trusted officers to court-martial the two Brits. The fact that the trial was unlawful did not faze Jackson, who justified himself by saying, "The laws of war did not apply to conflicts with savages." When even his hand-picked jury failed to reach the conclusion he desired, Jackson simply ordered Arbuthnot hanged and Ambrister shot. In essence, Jackson executed two British subjects on Spanish land in the absence of authorization or precedent, despite the fact that the United States was technically at peace with both Great Britain and Spain at the time.

**Arbuthnot believed that Jackson** was the architect of the entire border crisis, a renegade aiming for U.S. possession of both native and Spanish land. the Heidlers agree. To use the words of Alabama territorial Gov. William Bibb, "no man should be permitted to usurp the whole powers of the whole government and to treat with contempt all authority except that of his own will." Yet the Andrew Jackson of *Old Hickory's War* did so time and time again, often for indefensible reasons. Through this glimpse into Jackson's pre–White House days, the reader learns how Jackson's military career sowed the seeds for the kind of president he eventually would become.

Despite the different approaches taken by the Heidlers and Burstein, their characterizations offer a complementary portrait of Jackson. Unsurprisingly, both works have drawn fire. Certainly, neither is flawless: Burstein attempts to reimagine Jackson as a tragic Shakespearean figure, for example, an effort that is sometimes strained and distracting. Much of the criticism, however, focuses on the mere fact that these scholars reveal a less than likable, less than heroic Andrew Jackson. Biographers, some reviewers suggest, should be in the business of building up larger-than-life heroes rather than analyzing real, fallible individuals.

*Publishers Weekly* editor Mark Rotella and four co-authors, for example, blame Burstein for "tattering Jackson's repute more successfully than most of the president's 19th-century enemies." In fact, Burstein is one of the few historians to consider and investigate the personal

**A Notice To Our Subscribers**

From time to time, our subscriber list is rented to others. We carefully screen those to whom we rent our list and try only to rent to those whose offers we believe may interest our subscribers. If you do not wish to have your name included on our rental list, simply let us know by writing us at:

reason
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034
Attn: List rentals



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

side of Jackson since the 19th century. If he, like Jackson's so-called enemies, found little praiseworthy in Jackson after uncovering the man's more private side, that is hardly grounds for complaint.

In *Presidential Studies Quarterly*, Russ Braley, former foreign correspondent for the New York *Daily News*, accuses the Heidlers of seeing Jackson "with the eyes of the peace loving post-Vietnam war generation." But the real problem is that Braley sees Jackson with the eyes of the uncritically patriotic, WASP-loving World War II generation. Braley's defense of Jackson, based on the fact that "Jackson was so admired that the song 'The Battle of New Orleans' can still be heard wherever radios play," proves merely that Braley feels secure getting his historical analyses from Johnny Horton—and that he hasn't listened to many radios lately.

> Jackson's policy of compulsory removal of American Indians enacted a national plan for what was essentially ethnic cleansing and forcible redistribution of property from its rightful owners.

More serious is the implication that a mainstream (as opposed to "minority studies" or self-labeled "multicultural") work of history cannot incorporate the Native American position—or even consider crimes against Native Americans as "real crimes"—without losing its credibility and being tarred as politically correct revisionism.

The image of Jackson that emerges from *Old Hickory's War* and *The Passions of Andrew Jackson* is both compelling and, on the whole, convincing. This Jackson was a charismatic loose cannon, a leader with the makings of greatness repeatedly brought low by his own untamed passions and headstrong impulsiveness. This Jackson, controlling and uncontrollable, made a likelier tyrant than a democrat. (Perhaps there was something to Schlesinger's comparison between Jackson and FDR after all.) This Jackson was a man who exemplified characteristics later associated with other national leaders: before Abraham Lincoln, he represented selective adherence to the Constitution; before William McKinley, energetic imperialism; before Teddy Roosevelt, the cult of personality; before Bill Clinton, the personal made political.

In short, the Andrew Jackson described by Burstein and the Heidlers was an imperial president in the making long before imperial presidents were cool.

Ironically, this portrait, while not as personally flattering to Jackson, in reality grants him more importance—for, if nothing else, the poor example he set—than does the naive "Champion of the People" caricature. Considering the overwhelming affection scholars have shown Jackson, it perhaps is unsurprising to note that Old Hickory remains a fixture on most historians' lists of great presidents. Nearly all the so-called great presidents routinely named by U.S. historians were imperial presidents to one degree or another, consolidating authority in the executive and treating the letter of the Constitution as a suggestion rather than a command. The only imperial presidents routinely omitted from the "top 10" lists are those like Richard Nixon—those who abused the power of the White House and got caught.

Mainstream accounts of Jackson's accomplishments have endeared him to generations, not least to many libertarians. But how accurate are the common conceptions of Jackson's contributions to his office and country? He was certainly a son of the frontier. He was also a military hero, at least to the masses who did not have to clean up after his insubordination and



on individuality. In his future world, the handheld wireless has given way to an implanted wireless that eventually encompasses the whole brain. With that come security problems: Given that most people have unsecured computers today, it is not unreasonable to believe that people will also have unsecured brains. Memories can be edited or reprogrammed, and bodies can be switched with a quick visit to the hospital; stories revolve around mind-bending manipulations of identity. In such a world, the show asks, what defines us?

Depictions of shapely, scantily clad women are standard in Japanese comics and animations, and this series gladly provides them. But the message is subtly subversive: These bodies are literal commodities, shells their inhabitants can exchange if they feel like it. Kusanagi is female only in the sense that she wears female bodies, apparently to complement her favorite watch. No longer the key to identity, gender becomes a convention.

Familiar notions of identity suffer still more blows with the "Tachikoma smart tank," a vehicle crossed with a robot. The tanks are modeled after spiders, but they can also skate on wheels set in their legs. After each mission the Tachikomas are connected and their experiences synchronized, making them identical beings the next morning. If one is destroyed, that only means the loss of a chassis and the experiences leading up to its destruc- »



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"There is nothing remotely like this magazine."
—*National Journal*

"The libertarian magazine that's always engaging, entertaining and unpredictable."
—*The Washington Post*

"The magazine's refusal to carry water for either Democrats or Republicans is deeply refreshing in this era of partisan ugliness."
—*Folio*

One of "The 50 Best Magazines."
—*Chicago Tribune*

**Subscribe today and get a free issue. Call 1-888-reason-8 or go to www.reason.com.**

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

unauthorized activities. These credentials helped him claim the mantle of champion of the common man. But the reform movements that thrived in the resulting language of egalitarianism—movements for the abolition of slavery and the rights of women, for example—had little to do with the real Andrew Jackson, who was both an unrepentant slaveowner and a devotee of an already antiquated cult of masculinity.

The National Bank, which represented a gross overstep of the federal government's powers, did indeed meet its doom at Jackson's hands. Burstein suggests that Jackson's fervor came more from personal animosities than sound economic policy. More to the point, Jackson overreached his own constitutional limits in attacking the bank, fighting one wrong with another.

Likewise, his position against state nullification seems to have been less a matter of principle than a consequence of his personal split with nullification advocate John C. Calhoun, who resigned as Jackson's vice president and became a senator representing South Carolina. At any rate, Calhoun's states' rights decentralism is arguably more amenable to libertarian ideas than the evolution of an all-powerful national government undergirded by unflinching military suppression, a hallmark of the Jackson administration.

Jackson's embrace of the spoils system bolstered his power further. And his policy of compulsory removal of American Indians—besides enacting a national plan for what was essentially ethnic cleansing, coupled with the forcible redistribution of property from its rightful owners to those who had not earned it—was wildly at odds with the checks and balances inherent in the federal system, directly defying the Supreme Court's ruling in the 1831 case *Cherokee Nation v. State of Georgia*. Jackson's taunting response to Chief Justice John Marshall spoke volumes: "Marshall has made his decision. Now let him enforce it."

Ever the frontiersman, ever the general, Jackson believed that might made right and that the U.S. Army answered to him, not to the Supreme Court. Insisting that he personified the people, much as Louis XIV insisted that he was France, did not make Jackson an advocate of individual human rights; on the contrary, it earned him the title "King Andrew I" from his opponents. From such legacies libertarian heroes are not made.

A corrected image of Jackson shows readers why some of the Framers of the Constitution were concerned about the authority of the executive branch and how it might evolve. James Madison knew that human beings were not angels and anticipated that presidents would be swayed by their personal agendas, passions, and lesser natures. Burstein offers a case in point to demonstrate the validity of that anxiety—a welcome reminder as the nation enters presidential election season once again.

*The Passions of Andrew Jackson*, like *Old Hickory's War*, is an impressive presentation of a little-studied side of Andrew Jackson, and a welcome corrective to the uncritical praise he has received for so long. Just don't expect to find copies of either in the Hermitage gift shop.

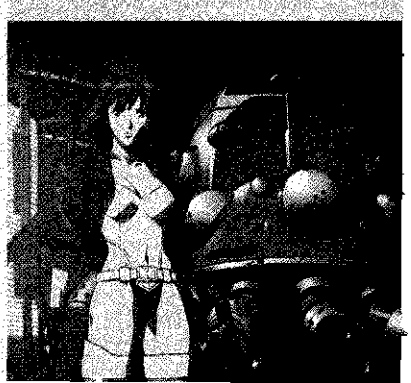
*Amy H. Sturgis (ahsturgis@mindspring.com) holds a Ph.D. in intellectual history with a specialty in Native American studies from Vanderbilt University, teaches in the Liberal Studies Program at Belmont University, and is the author of, among other works, two books on the U.S. presidency.*

tion. And the Tachikomas have the personality of cheerful preschool children.

But the most bizarre entity is the Laughing Man. The Laughing Man hacks the media, entering the cybereyes and cyberminds of the audience. Nobody knows what he looks like: His face is digitally obscured by a signature logotype. The Puppet Master, the antagonist in the movie, was still *someone*, but the Laughing Man may not be any particular individual; he could be a she, or a group, or independent people acting under the same nom de plume and logo. Or the Laughing Man might not exist at all, except as a media phenomenon. Section 9 can deal with terrorists, hackers, and other outlaws, thanks to its technological superiority. But it might not be able to defeat a spontaneous order.

Refreshingly, Shirow does not try to offer neat answers to the issues his show raises. He's content to speculate about the ways technology and politics will intersect, allowing his audience to consider the questions he raises—or just to sit back and enjoy the show.

*Anders Sandberg (asa@nada.kth.se) is science director of the think tank Eudoxa.*



*Ghost in the Shell* courtesy Manga Entertainment Inc.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

## The FBI Files

### Federally funded art takes on new meaning.

*Sara Rimensnyder*

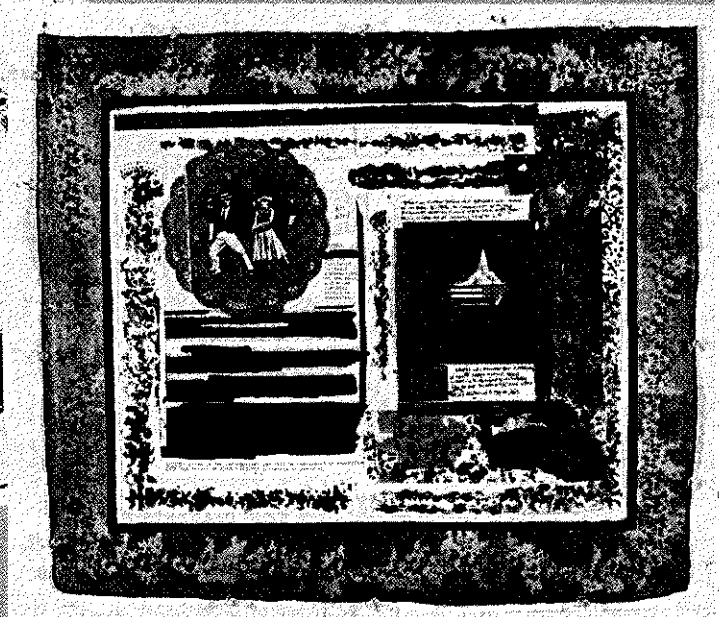
"The only reason the FBI stopped spying on me in 1973 is that their funding was cut off," says the 79-year-old artist and left-wing activist Arnold Mesches. "Otherwise they might still be on my tail."

I can't refute an expert. Mesches spent 26 years under federal surveillance. His 760-page file, obtained via a Freedom of Information Act (FOIA) request, recently has become the most celebrated FBI dossier in the United States. Mesches has turned dozens of the documents—crisply typed white pages thick with black bars, dating from 1945 to 1972—into an art exhibit, "The FBI Files," that was widely seen and lauded during its extended run at New York's P.S.1 gallery. It got a similar reception at Los Angeles' Skirball Cultural Center (where I caught the show in early February), and is next appearing in Buffalo.

Seeking to determine whether Mesches was a Soviet spy, investigators from the 1950s into the '70s relied on a wide network of paid (sometimes threatened) informants to document a private life down to its most minute details: the weight of his newborn daughter, news of a contribution to *Mad* magazine, the apparently incriminating way he wore his trousers rolled. Almost 10,000 days of surveillance, much of it post-McCarthy, should have been more than enough time to uncover whether a man was slipping state secrets to Moscow. But after grasping the total irrelevance of much of the data collected on Mesches, you start to feel that 10,000 *years* might not have been enough, even if he had been the KGB's favorite paint-soaked spook.

For the record, Mesches first publicly acknowledged in an October 2002 *New York Times* piece that he was indeed a Communist Party member. "To me," he says, apparently in earnest, "being a Communist meant that I was for peace, rights for black people, for women. It was never about overthrowing the government. I never even heard anything like that." While he was aware that he was being watched, he felt more annoyed than threatened: "We weren't doing anything that could actually get us arrested, so we weren't worried. We were marching for peace. Is that a Communist Party line?"

What's made the exhibit so popular—besides its jarring resonance in these days of the USA PATRIOT Act and of high-tech surveillance methods that make J. Edgar Hoover's FBI look quaint—is how beautiful the images are. Mesches first FOIAed his files not because he was curious about what the feds knew—"it was a long time ago"—but because while looking at another friend's file, he was struck by the pages' aesthetic beauty.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

He calls the pieces "illuminated manuscripts." They feature austere, typed, heavily-censored pages from the files set off by various historical, pop cultural, and commercial icons of the period. Among the images in Mesches' palette are a Warholesque shoe ad, a 3-D movie audience, Walter Cronkite, Batman, Sputnik, and what looks like a colorful rendition of Robby the Robot. Mesches frames the collages with elegant, colorful borders reminiscent of medieval illuminations.

Radio journalist Tony Kahn, while moderating a discussion on civil liberties at L.A.'s Skirball, called Mesches' FBI file "a monologue of innuendo." Kahn, son of the blacklisted screenwriter Gordon Kahn, suggests the exhibit turned that monologue into a dialogue, giving Mesches a voice in this careful study of himself. By this account, creating art—and exhibiting it—lets Mesches escape from a passive, fearful "surveilled" condition. This outlet seems especially important when thinking about being watched less as an information-gathering technique than as a tactic to scare Americans into meek, *1984*-style obedience.

I like that interpretation, so I ask Mesches about it.

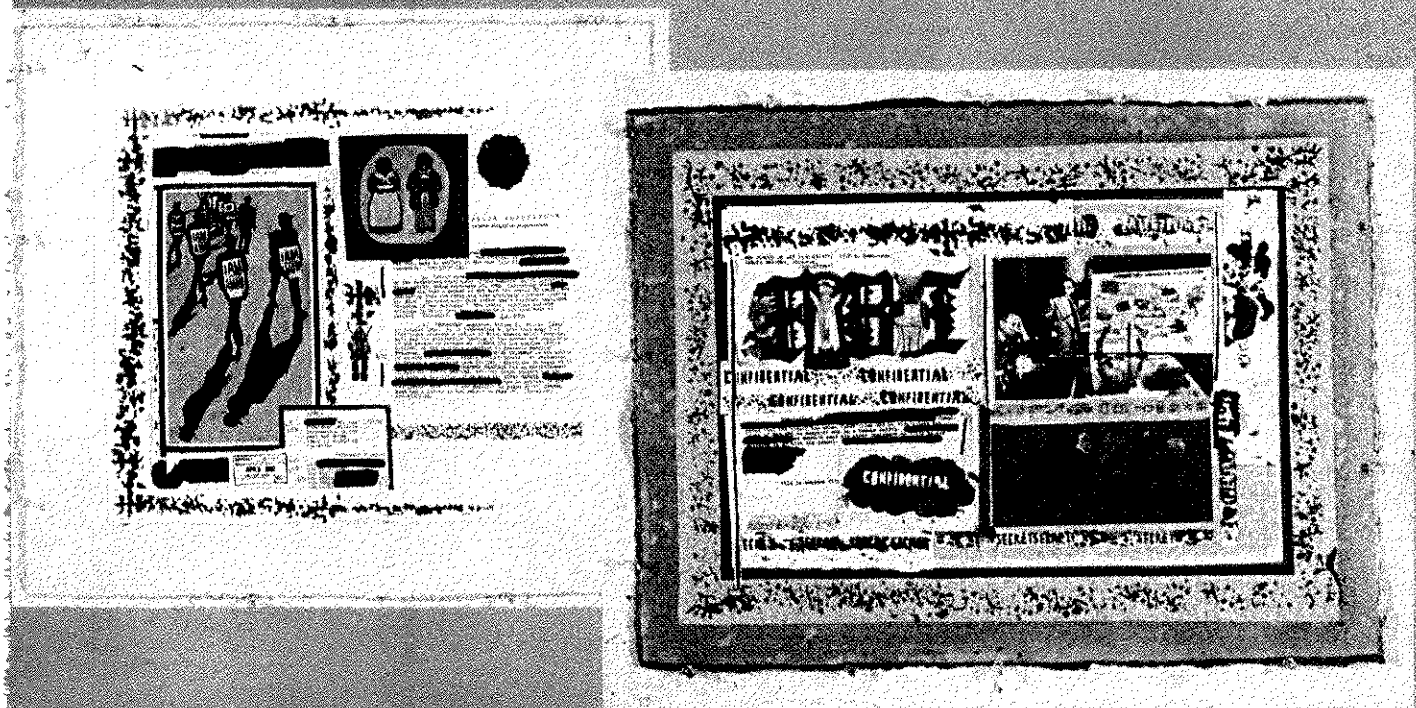
"Well, it sounds good when you say it," he tells me. "But no, I didn't do that at all. I didn't do the series to respond to anything or get back at anybody. I felt it was a way to make art." He considers the exhibit historical more than political or personal. "The old illuminated manuscripts are one of the most beautiful art forms we have," he says. "I wanted this to have that kind of feeling—retaining things for posterity as they did.

"What you put onto the canvas and you draw, it's all about you, what you live through. An artist is not a predictor or a prophet. You make art about the times you live in. But it turned out to be as timely as hell."

Indeed. The day after I spoke to Mesches, the PATRIOT Act lost one of its first legal challenges when a federal district judge limited its ban on giving "expert advice or assistance" to groups designated as foreign terrorist organizations. Meanwhile, the Bush White House was laying groundwork for plans to expand the act, which already permits surveillance of citizens who are not suspects in any crime. The administration would also like to make the act permanent, rather than allow some provisions to sunset in December 2005.

"I worry that the PATRIOT Act will make my years under surveillance look like a Zen garden," says Mesches, a target in a previous age of government snooping. "The fear is not what happened then; it's what's going on now."

*Sara Rimensnyder is a writer living in Los Angeles.*




"The FBI Files," courtesy Skirball Cultural Center

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

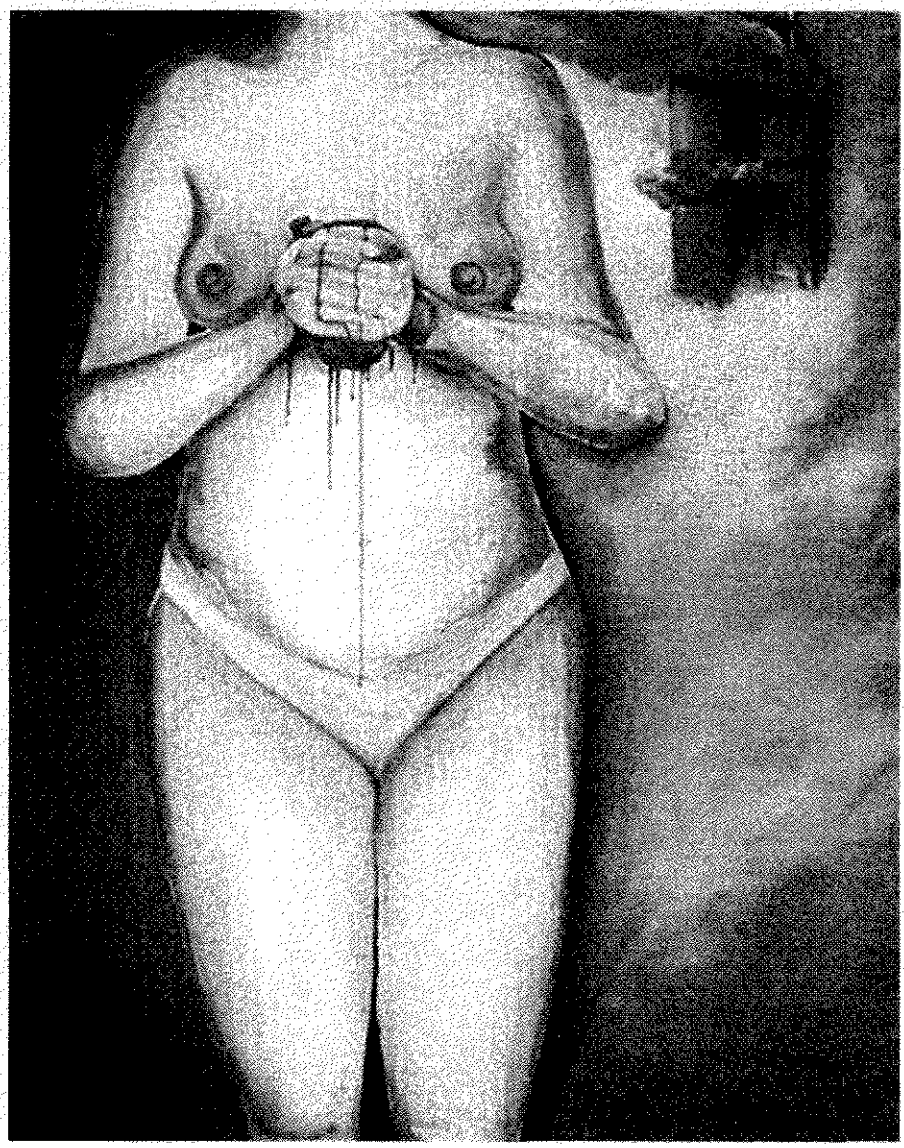
## Public Offense

*Charles Paul Freund*

WHAT KIND OF art belongs in public? In January, one cultural official in Los Angeles decided that "We need art that does not offend anyone." It was an unusually plainspoken, if rather plaintive, moment in the endless debate over public culture. What inspired it was a 150-foot-long tapestry that had just been unveiled at L.A.'s airport; the work's most controversial detail is at right. After numerous complaints, city officials ordered the work removed; after cries of censorship, the same officials rescinded their order.

Some unhappy observers compared the tapestry's nude to the Super Bowl's Janet Jackson moment. In fact, the image is a reaction by painter Victoria Delgadillo (one of the work's 115 creators) to 9/11, perhaps an even more unsettling concept to find in an airport. The tapestry's overall intention—to act as a bridge between the area's black and Latino communities—was lost in the shouting.

Public culture long ago became synonymous with public acrimony. The direct negotiation over meaning and value that occurs between patron and artist, or buyer and seller, never happens when art is displayed by a patron state as an act of general cultural "uplift." Instead, the cultural becomes political, and the less meaning a work has—"art that does not offend anyone"—the better for the state.



Victoria Delgadillo, Eye-Speak 2001



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# When Jobs Are Illegal, Only Illegals Will Have Jobs


**HOOVER DIGEST**
**RESEARCH AND OPINION ON PUBLIC POLICY**

**SUBSCRIBE**
*Receive four quarterly issues at the introductory rate of $20.*

**FREE ISSUE**
*Receive a complimentary issue of the latest Digest without obligation.*

**Call 800.935.2882 or visit www.hooverdigest.org**

Paid for by the Hoover Institution, Stanford University


My headline may exaggerate a bit but not much. The controversy over President Bush's immigration plan overlooks the fact that some of our illegal immigration problem arises from government regulations mandating unsustainable wages and benefits.

It sounds good to require employers to pay a "living wage" and provide health, parental leave, and many other benefits. But some workers are not economically productive enough to make those high-minded requirements cost-effective for the employer. **Mandated benefits make the young, the low-skilled, and the poorly educated legally unemployable.** Their jobs have been made illegal.

Since it is easier to recognize a problem when someone else is guilty, let's look at Europe. Most European countries have generous social safety nets partially provided by employers. Benefits such as six weeks of paid vacation, short workweeks, health care, and maternal leave all increase the costs of employing workers.

The result is that some people have fabulous jobs, and others have nothing. Workers whose productivity does not justify these compensation levels are out of luck. Unemployment in European countries has stabilized at 8 percent—a scandal by American standards. European youth (too young to have acquired skills commensurate with these compensation levels) spend years in universities, in socially enforced idleness, waiting to be allowed to do something genuinely useful.

In the meantime, there are still jobs for which no one is willing to pay the legally required compensation package. All over Europe, immigrants from North Africa and the Middle East do those jobs. These Muslim immigrants, barred from the higher-class jobs, are angry about their exclusion.

Of course, no one admits to planning this outcome. But that outcome is the inevitable consequence of years of legislation. European progressives have done a fine job of voting for bigger compensation packages. They break their arms patting themselves on the back for their compassion. But they conveniently overlook the fact that these compensation packages were purchased by cutting off the lower rungs of the job ladder. People who would have acquired valuable job skills and work habits no longer have the opportunity to do so.

Similarly, American teenagers hang out at the mall, while Mexican immigrants cut the grass and do the babysitting in the teenagers' middle-class neighborhoods. Suburban families prefer to pay those who work on a regular basis and who are often illegal; such work, which used to be a rite of passage for the young, has been made illegal by the imposition of mandated wages and benefits. How many American teenagers realistically need their own health benefits or paid parental leave?

In the 2003 legislative session alone, California passed eleven bills that the Chamber of Commerce considered "job killers," including increased health care requirements and increased costs of frivolous employee lawsuits. All this is in addition to California's expensive paid family-leave plan and inflexible wage and hour restrictions. Like their European counterparts, **California progressives expect employers to solve all the problems of the world, including childcare and health care**.

Immigration policy is a mess, no mistake. But until we address the problem of government's mandating unsustainable compensation levels, we will continue to have immigration problems. When we make jobs illegal, we ensure that only illegals will have those jobs.

*—Jennifer Roback Morse*

---


*Jennifer Roback Morse is a research fellow at the Hoover Institution.*

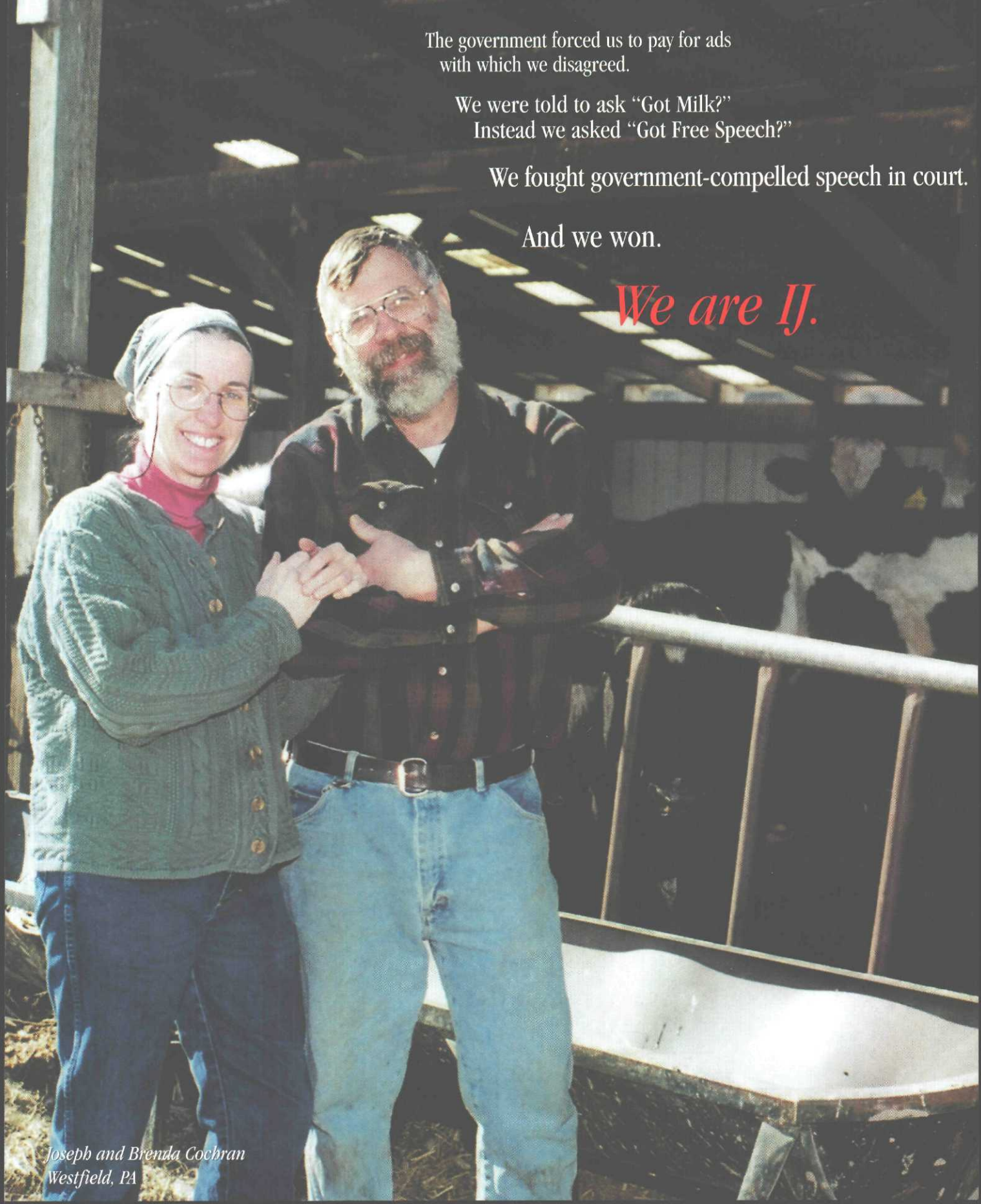


**HOOVER INSTITUTION**

*. . . ideas defining a free society*

**STANFORD UNIVERSITY, Stanford California 94305-6010 Toll-free: 877.466.8374 Fax: 650.723.1687 info@hoover.stanford.edu www.hoover.org**

ELECTRONIC REPRODUCTION PROHIBITED


The government forced us to pay for ads
with which we disagreed.
We were told to ask "Got Milk?"
Instead we asked "Got Free Speech?"
We fought government-compelled speech in court.
And we won.
We are IJ.
Joseph and Brenda Cochran
Westfield, PA

www.IJ.org

*Institute for Justice*
*Free speech litigation*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED